

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA            )     DOCKET NO. 1:09CR  
  )  
vs.                                     )  
  )  
MICHAEL DARCY,                     )  
  )  
                  Defendant.        )  
\_\_\_\_\_  
  )

TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE LACY H. THORNBURG  
UNITED STATES DISTRICT COURT JUDGE  
JULY 13, 2009

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**P R O C E E D I N G S**

**(Jury selection and opening statements  
reported but not transcribed herein.)**

**THE COURT:** Call your first witness.

**MS. FORD:** Government calls Kendra.

**KENDRA [No Last Name],  
being duly sworn, was examined and testified as follows:**

**DIRECT EXAMINATION**

**BY MS. FORD:**

**Q.** You're going to have to speak into the microphone so we  
can hear you, so you might want to pull it down closer to you,  
right to your mouth.

Please tell us just your first name.

**A.** Kendra.

**Q.** And how old are you now?

**A.** Seventeen.

**Q.** When is your birthday?

**A.** September 15th, 1991.

**Q.** Where are you -- where did you just graduate high school?

**A.** Johnson County High School.

**Q.** And where is that?

**A.** Tennessee.

**Q.** Prior to going to that high school, did you go to a  
different high school?

**A.** Yes.

1 Q. What high school was that?

2 A. Avery County.

3 Q. Avery County High School?

4 A. Yes.

5 Q. When did you start your freshman year at Avery County  
6 High School?

7 A. 2005.

8 Q. And in 2005, when did school start, approximately?

9 A. August.

10 Q. And how old would you have been in August 2005, going  
11 into your freshman year?

12 A. Thirteen.

13 Q. At the beginning of your freshman year at Avery County  
14 High School, did you join any clubs?

15 A. Yes.

16 Q. What clubs?

17 A. The Police Explorers.

18 Q. Could you tell us what the Police Explorers Club is?

19 A. It teaches you about police careers and law enforcement.

20 Q. And did it have an adviser?

21 A. Yes.

22 Q. When you first joined, or during the first part of your  
23 freshman year of high school, who was the adviser for the  
24 Police Explorers program?

25 A. Bob Johnson.

1 Q. Did your school have a school resource officer in the  
2 beginning of your freshman year?

3 A. Yes.

4 Q. Who was the school resource officer?

5 A. Bob Johnson.

6 Q. And at some point was Bob Johnson no longer the school  
7 resource officer?

8 A. Yes.

9 Q. Who became the school resource officer after Bob Johnson?

10 A. Michael Darcy.

11 Q. Do you know approximately when that was?

12 A. My freshman year.

13 Q. Do you know whether it was the fall or the winter or the  
14 spring of your freshman year?

15 A. I think the winter.

16 Q. So that would be the winter of 2005?

17 A. Yes.

18 Q. Well, if that was before December, it would be 2005,  
19 correct?

20 A. Yes.

21 Q. While you were going to high school your freshman year at  
22 Avery County High School, where were you living?

23 A. In Pineola.

24 Q. And who did you live with?

25 A. My mom and my stepdad and my brother.

1 Q. Did your mom have a job?

2 A. Yes.

3 Q. What were her work hours?

4 A. 6:00 to 2:30.

5 Q. Is that 6:00 a.m. to 2:30 p.m.?

6 A. Yes.

7 Q. Did your stepdad work?

8 A. Yes.

9 Q. And what were his hours?

10 A. Pretty much all day, like leave in the morning and not  
11 get home until after dark.

12 Q. Okay. Now, you already talked about Michael Darcy  
13 becoming the school resource officer. Was there also a point  
14 when he became the adviser of the Police Explorers program?

15 A. Yes.

16 Q. Do you see Michael Darcy here in the courtroom today?

17 A. Yes.

18 Q. Could you describe for the record the clothing he is  
19 wearing?

20 A. Red shirt.

21 Q. And where is he sitting?

22 A. At that table. Over there (indicating).

23 MS. FORD: Your Honor, I'd ask that the record  
24 reflect that she's identified the defendant, Michael Darcy.

25 THE COURT: Let the record so show.

1 BY MS. FORD:

2 Q. Besides working at the high school as the school resource  
3 officer, do you know if he worked anywhere else?

4 A. Beech Mountain Police Department.

5 Q. Was he a police officer there?

6 A. Yes.

7 Q. How did you first meet him?

8 A. At the school.

9 Q. And how?

10 A. My friends would talk to him, and I'd be with my friends.

11 Q. Before Michael Darcy became a Police Explorers adviser,  
12 did you take trips with the Police Explorers group?

13 A. I can't remember if we had any trips before that.

14 Q. Did you visit any police departments or sheriff's  
15 departments before Mr. Darcy became the adviser?

16 A. No.

17 Q. Tell us about your relationship with Mr. Darcy during  
18 your freshman year. Could you describe it for us, please.

19 A. He was the resource officer. And talked to him and  
20 stuff.

21 Q. Would you consider him a friend during your freshman  
22 year?

23 A. Yes.

24 Q. Did you talk to him?

25 A. Yes.



1 Q. What did you talk to him about?

2 A. Pretty much everything, like school, police stuff. Just  
3 everything.

4 Q. Did you talk to him about your family?

5 A. Yes.

6 Q. If you were having problems with your mom, did you talk  
7 about that with Mr. Darcy?

8 A. Yes.

9 Q. How did you talk to him, using what means of  
10 communication?

11 A. Telephone, text, IM.

12 Q. How did you get his phone number?

13 A. He gave it to me.

14 Q. Did you ask him for it or did he give it to you?

15 A. He gave it to me.

16 Q. How often -- by the end of your freshman year, how often  
17 do you think you talked to him?

18 A. Very often.

19 Q. How often would that be?

20 A. Every day.

21 Q. Did you ever -- by the end of your freshman year, did you  
22 ever spend any time alone with him?

23 A. He would take me home after Police Explorers meetings.

24 Q. Did anything happen during those trips home during your  
25 freshman year of school?

1 A. No.

2 Q. After you finished your freshman year of school and you  
3 were home for the summer, did you see Michael Darcy during  
4 that summer?

5 A. Yes.

6 Q. And tell us the first time, approximately, when was it.

7 A. June. Sometime in June.

8 Q. And how did you see him?

9 A. He came over to my house.

10 Q. Whose idea was it that he come over to your house?

11 A. Probably both, you know, both of our ideas.

12 Q. What happened when he got to your house?

13 A. We talked for a while.

14 Q. Was anybody else home?

15 A. No.

16 Q. Where was everybody else?

17 A. At work. And my brother was at his grandma's.

18 Q. Did Mr. Darcy know that when he came over?

19 A. Yes.

20 Q. Did you do anything more than talk on that occasion?

21 A. Kissed.

22 Q. What was he wearing when he came over?

23 A. Police uniform.

24 Q. And why was that?

25 A. Because he had been in court.

1 Q. After that time, did you see him again alone during the  
2 summer?

3 A. Yes.

4 Q. The next time that you saw him, how much later was it,  
5 how many days or weeks later, do you think?

6 A. Maybe a week or two.

7 Q. And describe what happened.

8 How did he get over to your house?

9 A. He drove.

10 Q. Was anybody home?

11 A. No.

12 Q. What happened at your house on that occasion?

13 A. We talked some more. And blow jobs.

14 Q. Okay. Kendra, I know that this is uncomfortable for you,  
15 but could you please pull the mic down, because the jurors  
16 have to hear what you're saying.

17 A. Sorry.

18 Q. That's okay. Could you repeat your answer, please.

19 A. Blow job.

20 Q. Did you know how to do that?

21 A. Not, like, really. I mean, I never had before.

22 Q. Whose idea was it?

23 A. His.

24 Q. Did he give you any instructions?

25 A. He told me what to do.

1 Q. And did he do anything sexual to you at that time?

2 A. No.

3 Q. Did you see him again by yourself --

4 A. Yes.

5 Q. -- another time?

6 How many days or weeks after that, after that second  
7 occasion?

8 A. Probably a few weeks.

9 Q. And what happened then?

10 A. The same thing.

11 Q. Was anybody home?

12 A. No.

13 Q. Did he know that nobody would be home?

14 A. Yes.

15 Q. Whose idea was it?

16 A. Both of ours to come over, for him to come over.

17 Q. Did you give him a blow job on that occasion?

18 A. Yes.

19 Q. And moving on through the summer to the beginning of your  
20 sophomore year of high school, how many times did he come over  
21 to your house and you give him oral sex during that summer, if  
22 you could estimate?

23 A. Probably three or four.

24 Q. When the summer finished, did you go back to Avery County  
25 High School?

1 A. Yes.

2 Q. And during the fall of your sophomore year, did you have  
3 a birthday?

4 A. Yes.

5 Q. And how old did you turn?

6 A. Fifteen.

7 Q. Well, in the fall of your sophomore year, that would be  
8 2006, correct?

9 A. Yes.

10 Q. So how old would you be on September 15th of 2006 if your  
11 birthday is 1991?

12 A. My sophomore year?

13 Q. Your birthday is September 15th, 1991, correct?

14 A. Yes.

15 Q. Okay. In the fall of 2006, you turned 15, correct?

16 A. Yes.

17 Q. Okay. That fall, before you turned 15 and after, did you  
18 continue to see Mr. Darcy?

19 A. Yes.

20 Q. Was he still the Police Explorers adviser?

21 A. Yes.

22 Q. And did you continue to see him alone?

23 A. Yes.

24 Q. And could you describe for us what would happen when you  
25 were alone with him during the fall of 2006?

1 A. Like, he would take me home from Police Explorers  
2 meetings.

3 Q. Did anything sexual happen on the way home?

4 A. Blow jobs.

5 Q. Where would they occur?

6 A. In his truck.

7 Q. In his truck?

8 A. Yes.

9 Q. Where would the truck physically be?

10 A. It was parked somewhere.

11 Q. Where would you park it sometimes?

12 A. On the Parkway.

13 Q. Were there other times other than when he was taking you  
14 home from the Police Explorers meetings that you had sexual  
15 relations with him?

16 A. Home from ball games.

17 Q. What do you mean ball games?

18 A. Like football games, basketball games.

19 Q. And what would happen then?

20 A. The same thing.

21 Q. Would he take you home from a ball game?

22 A. Yes.

23 Q. And what would happen on the way home?

24 A. Blow jobs usually.

25 Q. And where would they happen?

1 A. Just parking lots.

2 Q. Now, prior to the fall of 2006, so the summer between  
3 your freshman and sophomore years when he was coming over to  
4 your house, did you ever go on any Police Explorers trips  
5 during that summer?

6 A. Yes.

7 Q. Where?

8 A. Well, it wasn't really a Police Explorers trip, though.

9 Q. Okay. Well, I'm going to ask you -- was that in the fall  
10 of 2006?

11 A. Yes. I think it was in September.

12 Q. September of 2006?

13 A. I think. Or maybe it was 2005. I don't know. I don't  
14 remember.

15 Q. You're going to have to talk into the mic.

16 A. I can't remember.

17 Q. That's okay.

18 You said it wasn't really a Police Explorers trip. Could  
19 you explain that?

20 A. Well, we told my mom it was a Police Explorers trip.

21 Q. And where were you supposed to go on a Police Explorers  
22 trip?

23 A. To a sheriff's department.

24 Q. Do you remember what sheriff's department?

25 A. A sheriff's department in Hickory.

1 Q. And who all was supposed to go on the Police Explorers  
2 trip if it really was a Police Explorers trip?

3 A. If it really was a Police Explorers trip? Like, other  
4 Police Explorers.

5 Q. And what did you -- where did you tell your mom you were  
6 going?

7 A. To the sheriff's department in -- yeah, the sheriff's  
8 department in Hickory.

9 Q. Did you give your mom a permission slip for that trip?

10 A. Yes.

11 Q. Who made that permission slip?

12 A. Darcy.

13 Q. And how did he make it?

14 A. On the computer.

15 Q. And what did you do once you got the permission slip from  
16 Mr. Darcy?

17 A. I gave it to my mom.

18 Q. Did she sign it?

19 A. Yes.

20 Q. Kendra, I'm going to show you what I've marked as  
21 Government's Exhibit 6. Do you see it on your screen there?

22 A. Yes.

23 Q. Do you recognize it?

24 A. Yes.

25 Q. What is it?



1 A. A permission slip to the sheriff's department.

2 Q. Is it the permission slip you were just talking about?

3 A. Yes.

4 MS. FORD: Your Honor, I'd move to introduce  
5 Government's Exhibit 6 and publish to the jury.

6 THE COURT: Let it be admitted.

7 (Government's Exhibit 6 received in  
8 evidence and displayed to the jury.)

9 BY MS. FORD:

10 Q. So, Kendra, that says that the Police Explorers trip was  
11 on September 30, 2006; is that correct?

12 A. Yes.

13 Q. And there's a signature line at the bottom, Jane Johnson  
14 Smith. Who is that?

15 A. My mom.

16 Q. This says that you were going to visit and tour the  
17 Caldwell County Sheriff's Department jail and 911 Dispatch  
18 Center at the safety fair in Catawba County, Hickory.

19 Did you actually go to those places on a Police Explorers  
20 trip?

21 A. No.

22 Q. Did you actually go to the Catawba County Justice Center?

23 A. We took pictures there.

24 Q. Why did you take a picture there?

25 A. So it would look good to my mom.

1 Q. And who took the picture?

2 A. Darcy.

3 Q. I'm going to show you what I've marked as Government's  
4 Exhibit 7. Can you see that on your screen?

5 A. Yes.

6 Q. Do you recognize it?

7 A. Yes.

8 Q. Is it a photograph?

9 A. Yes.

10 Q. Is it a photograph of you in front of the Catawba County  
11 Justice Center?

12 A. Yes.

13 Q. Is that the picture you were just describing that  
14 Mr. Darcy took?

15 A. Yes.

16 MS. FORD: Your Honor, I'd move to introduce and  
17 publish Government's Exhibit 7.

18 THE COURT: Let it be admitted.

19 (Government's Exhibit 7 received in  
20 evidence and displayed to the jury.)

21 BY MS. FORD:

22 Q. Did you really go there on a Police Explorers trip?

23 A. Not on a Police Explorers trip, no.

24 Q. Did you go anywhere else on this trip?

25 A. We went to a hotel.

1 Q. Do you remember what hotel it was?

2 A. I think it was Holiday Inn.

3 Q. And where was it?

4 A. In Hickory.

5 Q. Who made the arrangements to go to the hotel?

6 A. Darcy.

7 Q. Who paid for the hotel?

8 A. Darcy.

9 Q. What was supposed to happen at the hotel?

10 A. We were supposed to have sex.

11 Q. Did you have sex?

12 A. No.

13 Q. Why not?

14 A. Cause we just changed our minds.

15 Q. So how long do you think you spent at the hotel?

16 A. A few hours.

17 Q. And then what happened after that -- those few hours?

18 A. We went home.

19 Q. How did you get home?

20 A. He drove.

21 Q. Was anybody else on this trip with you?

22 A. No.

23 Q. When you turned 15 that fall on September 15th, 2006, did  
24 you get any presents?

25 A. Did I what?

1 Q. I'm sorry?

2 A. What did you say?

3 Q. Did you get any presents for your birthday?

4 A. Yes.

5 Q. Did Mr. Darcy give you any presents?

6 A. Yes.

7 Q. What did he give you?

8 A. Belly button rings.

9 Q. What was the belly button ring? Describe it for us.

10 A. Handcuffs.

11 Q. I'm showing you what I've marked as Government's  
12 Exhibit 2 for identification purposes. Do you recognize that?

13 A. Yes.

14 Q. Is it a picture?

15 A. Yes.

16 Q. What is it a picture of?

17 A. My belly button ring.

18 Q. Is it the belly button ring that Darcy gave you for your  
19 birthday?

20 A. Yes.

21 MS. FORD: Your Honor, I'd move to introduce and  
22 publish Government's 2.

23 THE COURT: That's Government's Exhibit 2?

24 MS. FORD: Yes, sir.

25 THE COURT: Let it be admitted.

1 (Government's Exhibit 2 received in  
2 evidence and displayed to the jury.)

3 BY MS. FORD:

4 Q. How did you get your belly button pierced?

5 A. My mom let me go get it pierced.

6 Q. Where did you get it pierced?

7 A. Ink Link in Boone.

8 Q. And was Mr. Darcy with you?

9 A. No.

10 Q. During that fall of 2006, was Mr. Darcy still the Police  
11 Explorers adviser?

12 A. Yes.

13 Q. Did you ever go on ride-alongs with him?

14 A. Yes.

15 Q. What's a ride-along?

16 A. Like where you can ride around with police officers while  
17 they work.

18 Q. I'm going to show you what I've marked as Government's  
19 Exhibit 3. Do you recognize that?

20 A. Yes.

21 Q. What is it?

22 A. A picture of me and Darcy.

23 Q. And is this what the two of you looked like during  
24 2006-2007?

25 A. Yes.

1 Q. And who took that picture?

2 A. There was a timer on the camera.

3 Q. Where did you get the hat?

4 A. It was his.

5 MS. FORD: Your Honor, I'd move to introduce  
6 Government's Exhibit 3 and publish.

7 THE COURT: Let it be admitted.

8 (Government's Exhibit 3 received in  
9 evidence and displayed to the jury.)

10 BY MS. FORD:

11 Q. I'm sorry. Where did you get the hat again?

12 A. It was his.

13 Q. And what type of police uniform is he wearing there?

14 A. A Beech Mountain --

15 Q. Do you --

16 A. -- police --

17 Q. I'm sorry to interrupt.

18 A. A Beech Mountain police uniform.

19 Q. Do you know where that picture was taken?

20 A. On Beech Mountain.

21 Q. Now I'm going to show you what I've marked as  
22 Government's Exhibit 4.

23 Do you recognize Government's Exhibit 4?

24 A. Yes.

25 Q. What is it?

1 A. Me in front of his police car.

2 Q. And was this picture taken during the time of your  
3 relationship in 2006-2007?

4 A. Yes.

5 MS. FORD: Your Honor, I'd move to introduce  
6 Government's Exhibit 4 and to publish.

7 THE COURT: Let it be admitted.

8 (Government's Exhibit 4 received in  
9 evidence and displayed to the jury.)

10 BY MS. FORD:

11 Q. Whose police car is that?

12 A. His.

13 Q. And were you on a ride-along --

14 A. Yes.

15 Q. -- during this picture?

16 A. Yes.

17 Q. Was anybody else with you during the ride-along?

18 A. No.

19 Q. Do you remember if anything sexual happened during  
20 ride-alongs?

21 A. Blow jobs.

22 Q. In the police car?

23 A. Yes.

24 Q. So we've already talked about the trip to Hickory and --  
25 the trip to the hotel in Hickory. I want to move past that to

1 December of 2006.

2 Did you get a job?

3 A. Yes.

4 Q. And where was the job?

5 A. Ski resort on Beech Mountain.

6 Q. Did anybody help you get that job?

7 A. Darcy.

8 Q. Did anybody work there with you on Beech Mountain, or Ski  
9 Beech?

10 A. There was a few people that worked up there.

11 Q. Did Mr. Darcy work there too?

12 A. Yes.

13 Q. And what was your job at Ski Beech?

14 A. Lift ticket sales.

15 Q. And what was his job at Ski Beech?

16 A. The same thing.

17 Q. Did you often work together?

18 A. Yes.

19 Q. I'm going to show you what I've marked as Government's  
20 Exhibit 8. Do you recognize that?

21 A. Yes.

22 Q. What is it?

23 A. A work permit.

24 Q. Is that the form that you have to fill out to be able to  
25 work at Ski Beech?



1 A. Yes. If you're under 16.

2 Q. Did your mom sign it?

3 A. Yes.

4 MS. FORD: Your Honor, I'd move to introduce  
5 Government's Exhibit 8 and to publish.

6 THE COURT: Let it be admitted.

7 (Government's Exhibit 8 received in  
8 evidence and displayed to the jury.)

9 BY MS. FORD:

10 Q. Zooming in to the top portion of the work permit, who  
11 filled that out?

12 A. Darcy.

13 Q. Have you seen his handwriting before?

14 A. Yes.

15 Q. Do you recognize that as his handwriting?

16 A. Yes.

17 Q. How did you get to and from work at Ski Beech?

18 A. My mom would meet Darcy halfway and then he would take me  
19 up to Beech Mountain.

20 Q. So who would take you actually up to the ski resort?

21 A. Darcy.

22 Q. And then when you were done with work, who would take you  
23 down the mountain from the ski resort?

24 A. Darcy.

25 Q. And where would he take you?

1 A. To meet my mom.

2 Q. When you worked with -- did you work with Darcy during  
3 the week?

4 A. Yes.

5 Q. Did anything happen with him on your way home during the  
6 week?

7 A. Yeah. We would park somewhere, and blow jobs.

8 Q. Did anything ever happen in the parking lot at Ski Beech?

9 A. Yes.

10 Q. What?

11 A. Blow jobs.

12 Q. Did you ever stop anywhere along the way -- after you  
13 left the parking lot and before you met your mom, did you ever  
14 stop anywhere along the way with Mr. Darcy?

15 A. Sometimes if we didn't stop at Beech Mountain, their  
16 parking lot, we would go to Sugar Mountain parking lot.

17 Q. And what would happen there?

18 A. Same thing.

19 Q. You've talked a bit about giving him blow jobs, but did  
20 he ever do anything to you?

21 A. Sometimes.

22 Q. What would he do?

23 A. He would touch me.

24 Q. Where would he touch you?

25 A. Down there.

1 Q. Underneath or over top of your clothing?

2 A. Underneath.

3 Q. Okay. While you were working at Ski Beech, did you work  
4 with Mr. Darcy on the weekends sometimes?

5 A. Yes.

6 Q. And did you go anywhere after work on the weekends?

7 A. Yes.

8 Q. Where would you go?

9 A. Just parking lots.

10 Q. Did you ever go to hotels?

11 A. Yes.

12 Q. After you went to the Holiday Inn in Hickory, did you go  
13 to a hotel again?

14 A. Yes.

15 Q. Where did you go?

16 A. Banner Elk. Best Western, I think.

17 Q. Do you remember approximately the first time you ever  
18 stayed there?

19 A. The end of February to beginning of March.

20 Q. Of what year?

21 A. 2007.

22 Q. Okay. Who made arrangements for you to stay at that  
23 hotel?

24 A. He did.

25 Q. Who paid for the room at the Best Western?

1 A. He did.

2 Q. What happened during your first stay at the end of  
3 February, beginning of March at the Best Western?

4 A. We had sex.

5 Q. Who is we?

6 A. Me and Darcy.

7 Q. By sex, do you mean sexual intercourse?

8 A. Yes.

9 Q. Did you have any type of birth control?

10 A. Condoms.

11 Q. Who brought the condoms?

12 A. He did.

13 Q. After that trip to the Best Western, did you go back to  
14 that same hotel again?

15 A. Yes.

16 Q. How many times do you think you went to that Best  
17 Western?

18 A. Probably at least once every weekend till ski season was  
19 over.

20 Q. So how many times approximately do you think that was?

21 A. Maybe five or six.

22 Q. Did you have sex every time you went there?

23 A. Yes.

24 Q. And what type, if any, birth control did you use there?

25 A. Condoms.

1 Q. Who brought the condoms each time?

2 A. He did.

3 Q. While you were involved with Michael Darcy -- and we're  
4 talking up to the time when you were working at Ski Beech --  
5 did he ever give you driving lessons?

6 A. Yes.

7 Q. And why was that?

8 A. So we could spend more time together. And my mom was  
9 afraid.

10 Q. Your mom was afraid of what?

11 A. Of giving me driving lessons.

12 Q. What, if anything, happened during the driving lessons?

13 A. Blow jobs.

14 Q. Where would they occur?

15 A. The Parkway.

16 Q. I'm going to show you what I've marked as Government's  
17 Exhibit 5. Do you recognize Government's Exhibit 5?

18 A. Yes.

19 Q. Is it a picture?

20 A. Yes.

21 Q. What's it a picture of?

22 A. Me in the truck.

23 Q. Doing what?

24 A. Well, driving. Sitting there.

25 Q. Is this during one of the driving lessons?

1 A. Yes.

2 Q. And who took the picture?

3 A. Darcy.

4 MS. FORD: Your Honor, I'd move to introduce  
5 Government's 5 and to publish.

6 THE COURT: Let it be admitted and published.

7 (Government's Exhibit 5 received in  
8 evidence and displayed to the jury.)

9 BY MS. FORD:

10 Q. Do you know approximately when the ski season ended that  
11 year?

12 A. The end of March. End of March.

13 Q. After the end of March 2007 up to May of 2007, did you  
14 continue to see Darcy alone?

15 A. Yes.

16 Q. Where would you see him?

17 A. At school and Police Explorer meetings and, um --

18 Q. Did he give you driving lessons during that time period?

19 A. Yes.

20 Q. And what, if anything, sexual happened during the driving  
21 lessons?

22 A. Blow jobs.

23 Q. Did you have sex after you stopped working at Ski Beech  
24 but before May of 2007?

25 A. I think -- I can't remember.

1 Q. Okay. You said that you continued to give him blow jobs.  
2 Did he do anything to you?

3 A. Not really. Not that I remember.

4 Q. Did he ever give you his class ring?

5 A. I wore it sometimes just when I was with him.

6 MS. FORD: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 BY MS. FORD:

9 Q. I'm going to show you what I've marked as Government's  
10 Exhibit 10. Take a look at it and tell me if you recognize  
11 it.

12 A. It's his class ring.

13 MS. FORD: Your Honor, I'd move to introduce and  
14 publish Government's 10.

15 THE COURT: Let it be admitted and published.

16 (Government's Exhibit 10 received in  
17 evidence.)

18 BY MS. FORD:

19 Q. Do you see a year of graduation on here?

20 A. '81.

21 Q. Would that be 1981?

22 A. Yes.

23 Q. Did you wear that sometimes?

24 A. Yes.

25 Q. Where?

1 A. Mostly in his truck when I was with him.

2 Q. You wore it around your neck like a necklace?

3 A. Yes.

4 Q. So, Kendra, prior to May of 2007, how many times would  
5 you estimate you, in your words, gave Michael Darcy blow jobs?

6 A. Until May 2007?

7 Q. So from the first time you gave him a blow job in the  
8 summer of 2006 through the winter when you were working at Ski  
9 Beech, and then while he was giving you driving lessons, up to  
10 May of 2007.

11 A. A lot. Pretty much every time I seen him alone.

12 Q. Was it more than 10 times?

13 A. Yes.

14 Q. More than 20 times?

15 A. Yes.

16 Q. More than 30 times?

17 A. Probably.

18 Q. And up to May of 2007, how many times do you think you  
19 actually had sex with him?

20 A. Really, the only time we stayed at the hotel -- those  
21 hotels.

22 Q. And at each time, did you use a condom?

23 A. Yes.

24 Q. And who brought the condom?

25 A. He did.



1 Q. By May of 2007, what would you call your relationship  
2 with Michael Darcy?

3 A. Boyfriend/girlfriend.

4 Q. Did you talk about that with him?

5 A. Yes.

6 Q. Did he call himself your boyfriend?

7 A. Yes.

8 Q. Now, Kendra, did you know at that time that he was  
9 married?

10 A. Yes.

11 Q. But you continued to have a relationship with him,  
12 correct?

13 A. Yes.

14 Q. Why was that?

15 A. Because he said that they didn't have any kind of  
16 relationship. They just, like, lived there.

17 Q. In May of 2007, did you go on a trip with the Police  
18 Explorers?

19 A. Yes.

20 Q. Who was the adviser at that time?

21 A. Darcy.

22 Q. And was there a permission slip involved for that trip?

23 A. Yes.

24 Q. And who made the permission slip?

25 A. He did.

1 Q. What did you do with the permission slip once you got it  
2 from him?

3 A. I took it to my mom.

4 Q. Did she sign it?

5 A. Yes.

6 Q. I'm going to show you what I've marked as Government's  
7 Exhibit 12. Do you recognize that?

8 A. Yes.

9 Q. What is it?

10 A. Permission slip to go to Carowinds.

11 MS. FORD: Your Honor, I'd move to introduce and  
12 publish Government's Exhibit 12.

13 THE COURT: Let it be admitted and published.

14 (Government's Exhibit 12 received in  
15 evidence and displayed to the jury.)

16 BY MS. FORD:

17 Q. Prior to going on the Carowinds trip, did you discuss  
18 that trip with Michael Darcy?

19 A. Yes.

20 Q. What did you talk about?

21 A. Like what the schedule would be and stuff like that.

22 Q. The Carowinds trip, were you going to stay overnight  
23 somewhere?

24 A. Yes.

25 Q. Where were you supposed to stay overnight?

1 A. At a hotel.

2 Q. Who made the arrangements for the hotel?

3 A. Darcy.

4 Q. Did you and Darcy talk about having a particular  
5 arrangement at the hotel?

6 A. Yes.

7 Q. What was that?

8 A. Get rooms next to each other so they had joining doors.

9 Q. On May 12th, 2007 did you go to Carowinds?

10 A. Yes.

11 Q. How did you get to Carowinds?

12 A. He drove.

13 Q. Where did -- describe for us the trip. Like where did it  
14 start?

15 A. First we went to Carowinds and --

16 Q. Wait. I'm going to back you up.

17 That morning, where did you leave from?

18 A. The high school.

19 Q. What high school?

20 A. Avery County High School.

21 Q. Is that in North Carolina?

22 A. Yes.

23 Q. Was there any -- where did you meet?

24 A. In the front parking lot at the high school.

25 Q. Who took you there?

1 A. My mom took me to the high school.

2 Q. Were there other kids meeting at the high school?

3 A. Yes.

4 Q. Were they also going on the trip?

5 A. Yes.

6 Q. Approximately how many other kids, do you think?

7 A. Probably 15 or 20.

8 Q. Were there any other adults?

9 A. Yes.

10 Q. How many, if you know?

11 A. Three others that I know of. And some of the kids were  
12 over 18. Or were 18.

13 Q. How did the other kids get down to Carowinds?

14 A. They drove or rode with somebody.

15 Q. Who did you ride with?

16 A. Darcy.

17 Q. Was there anybody else in your car?

18 A. No.

19 Q. Did you have a bag or anything with you?

20 A. Yes.

21 Q. And what did you do with the bag?

22 A. Put it in his truck.

23 Q. Do you remember what color it was?

24 A. Red, I think.

25 Q. How long did it take to get down to Carowinds?

1 A. Probably three hours. Around three hours.

2 Q. And what happened -- where did you go once you left the  
3 Avery County High School parking lot with Michael Darcy?

4 A. To Carowinds.

5 Q. And what happened while you were at Carowinds?

6 A. We were there for -- until we had to leave to get ready  
7 to go to a concert.

8 Q. Did you see the other kids on the trip at Carowinds?

9 A. We would, like, walk past them sometimes.

10 Q. Did you hang out with the other kids at Carowinds?

11 A. No.

12 Q. Who were you with?

13 A. Darcy.

14 Q. Anybody else?

15 A. No.

16 Q. What happened when you were done at Carowinds that day?

17 A. We went to the concert.

18 Q. Did you go anywhere before you went to the concert?

19 A. We went to the hotel.

20 Q. Do you remember what hotel it was?

21 A. I don't remember the name of it.

22 Q. Was it near Carowinds?

23 A. Yes.

24 Q. And tell us about the hotel room that you had.

25 Were you by yourself?

1 A. Yes.

2 Q. Did it have an adjoining door?

3 A. Yes.

4 Q. So it joined -- it had an interior door that joined to  
5 another hotel room?

6 A. Yes.

7 Q. And who was in that hotel room?

8 A. Darcy.

9 Q. Did either of you have roommates?

10 A. No.

11 Q. Did you see any of the other kids' hotel rooms?

12 A. No.

13 Q. Did Michael Darcy actually stay and sleep in his hotel  
14 room?

15 A. No.

16 Q. Where did he stay and sleep?

17 A. In mine.

18 Q. Okay. So did you check into the hotel room before you  
19 went to the concert?

20 A. Yes.

21 Q. And what concert did you go to?

22 A. Akon and Gwen Stefani.

23 Q. And where was that?

24 A. Verizon amphitheater.

25 Q. Was that in Charlotte?

1 A. Yes.

2 Q. Did you have seats or were you on the lawn?

3 A. We had seats.

4 Q. Who is we?

5 A. Everybody that went with us.

6 Q. Did you and Darcy have seats?

7 A. Yes.

8 Q. Did you sit next to each other?

9 A. Yes.

10 Q. Did you sit next to any other kids on the trip?

11 A. No.

12 Q. Did you see them at the concert at all?

13 A. When we first got there.

14 Q. Did you all ride up together or separately?

15 A. We all went at one time.

16 Q. Who did you ride up with?

17 A. Darcy.

18 Q. Anybody else in the car?

19 A. No.

20 Q. Did you hang out with any other kids at the concert?

21 A. No.

22 Q. Who did you hang out with?

23 A. Darcy.

24 Q. And how did you get back -- or how did you leave the  
25 concert?

- 1 A. With Darcy.
- 2 Q. And where did you go?
- 3 A. To the hotel.
- 4 Q. Did you go to your room?
- 5 A. Yes.
- 6 Q. Where did he go?
- 7 A. To his room.
- 8 Q. Did he stay in his room?
- 9 A. No.
- 10 Q. Where did he go after that?
- 11 A. To my room.
- 12 Q. Did he end up spending the night in your room?
- 13 A. Yes.
- 14 Q. What happened in your room?
- 15 A. We had sex.
- 16 Q. Did you use any form of birth control?
- 17 A. Condoms.
- 18 Q. Who brought the condoms?
- 19 A. He did.
- 20 Q. Did you have sex again during that trip?
- 21 A. I'm not sure if we did the next morning or not.
- 22 Q. Was there any oral sex during that trip?
- 23 A. No.
- 24 Q. Then did he touch you at all during that trip?
- 25 A. Just sex.



1 Q. What happened the next morning?

2 A. We went to Carowinds.

3 Q. Did you hang out with any of the other kids at Carowinds?

4 A. No.

5 Q. Who were you with at Carowinds?

6 A. Darcy.

7 Q. When it was time to go home, how did you get home?

8 A. I rode with him.

9 Q. Anybody else in the car?

10 A. No.

11 Q. Did you go back to Avery County the next morning? Or the  
12 next day?

13 A. Yes.

14 Q. And where did you go once you got back to Avery County?

15 A. Home.

16 Q. Who took you home?

17 A. Darcy.

18 Q. During the course of your relationship with Michael  
19 Darcy, did he write you letters?

20 A. Yes.

21 Q. Did he send you cards?

22 A. Yes.

23 Q. I'm going to show you what I've marked as Government's  
24 Exhibit 11.

25 MS. FORD: Could you show the 11, too, please. Just

1 move it up. Yeah.

2 **BY MS. FORD:**

3 **Q.** Do you recognize Government's Exhibit 11?

4 **A.** Yes.

5 **Q.** What is it?

6 **A.** A letter that he wrote to me.

7 **Q.** Do you recognize the handwriting?

8 **A.** Yes.

9 **Q.** When you say "he," is that Michael Darcy?

10 **A.** Yes.

11 **MS. FORD:** Your Honor, I'd move to introduce  
12 Government's Exhibit 11.

13 **THE COURT:** Let it be admitted.

14 **MS. FORD:** And publish.

15 **(Government's Exhibit 11 received in**  
16 **evidence and displayed to the jury.)**

17 **MS. FORD:** Could you show the first half of the  
18 first page, please? Thank you.

19 **BY MS. FORD:**

20 **Q.** Kendra, could you, into the mic, read it?

21 **A.** The whole thing?

22 **Q.** Um-hum.

23 **A.** "Kendra: Hey, baby. I still can't believe that you are  
24 my girl and that I get to see you and be with you as you're  
25 going through high school. I wish every day that you had gone

1 to my school with me and that we could act like a boyfriend  
2 and girlfriend. We have had a very good year together this  
3 year. I hope you will always remember the times me and you  
4 shared this year, from our first meeting at your house" --

5 **Q.** Hold on a minute.

6 What does he mean by "from our first meeting" in quotes?

7 **MS. SISON:** Objection. Speculation.

8 **THE COURT:** Overruled. You may answer.

9 **THE WITNESS:** The first time he came over to my  
10 house.

11 **BY MS. FORD:**

12 **Q.** And what happened that first time?

13 **A.** We -- when we kissed.

14 **Q.** Okay. So continue reading, please.

15 **A.** Um --

16 **Q.** From our first meeting...

17 **A.** "... from our first meeting at your house and the trip  
18 this weekend to Carowinds and all points in between, the  
19 fair" --

20 **Q.** What happened at the fair?

21 **A.** We were just late getting home, and my mom was at work,  
22 so she didn't really know where I was at because I didn't have  
23 good service up there, and she'd been trying to call.

24 **Q.** Okay. Keep reading, please.

25 **A.** "That night we really thought we were caught, and even if

1 we did, my love for you would never change. Our first hotel  
2 trip to Hickory, you were so nervous. If you hadn't been on  
3 the bed, you would have been pacing around."

4 Q. Hold on a minute. What's he talking about there, the  
5 first hotel trip to Hickory?

6 A. When we went to Hickory when we were supposed to go to  
7 the sheriff's department.

8 Q. Was that the trip you talked about where you were  
9 supposed to be on a Police Explorers trip?

10 A. Yes.

11 Q. And you went to a hotel but didn't actually have sex?

12 A. Yes.

13 Q. Okay. Please continue.

14 A. "You accepting my promise ring made me the happiest guy  
15 in the world. Our second hotel stay in which you finally  
16 became a woman" --

17 Q. Hold on there. What's he mean there?

18 A. When we had sex.

19 Q. Okay. Continue, please.

20 A. "... and shared your love with me. I have been the  
21 happiest this year with you than I could ever imagine I could  
22 be. You mean everything to me. Without you, I have nothing.  
23 I love working with you this winter and you made me laugh more  
24 times than I can think of. I hope that this job works out so  
25 we can spend your high school years together. I'm also very

1 happy I was your first guy and only guy."

2 Q. What does he mean by that?

3 A. Like the only guy I'd been with.

4 Q. Been with in what way?

5 A. Like sexually.

6 Q. Okay. Continue reading at the top, please.

7 A. "I want you to know just how much that means to me, that  
8 you would save yourself for me and be faithful to me until we  
9 die. I will promise I will do the same for you. I can't  
10 wait" --

11 Q. What's the next word, if you can't read that word?

12 A. I am writing you -- "I'm writing this in your senior  
13 yearbook because then I know we only have a few more months  
14 until the happiest day of our lives. I love you more than you  
15 know, forever and a day. Love, your baby, Mike."

16 Q. After the trip to Carowinds, did you continue to have a  
17 relationship with Michael Darcy?

18 A. Yes.

19 **THE COURT:** I think we will go have our lunch and  
20 come back and start the next question.

21 Persons other than jurors remain seated.

22 Members of the jury, you are excused to go have your  
23 lunch. Be back at 2:15.

24 **(The jury left the courtroom.)**

25 **THE COURT:** All right recess until 2:15.

1                   **(Luncheon recess.)**

2                               \* \* \*

3                   **(The proceedings resume at 2:15 p.m.**

4                   **Defendant present in the courtroom.)**

5                   **MS. SISON:** Your Honor, before we bring back Ms. --  
6 or Kendra to the stand, I just wanted to ask the Court that  
7 after she testifies you give the jury an instruction regarding  
8 other crimes, wrongs, or acts of defendant.

9                   **THE COURT:** Do you have a proposed instruction?

10                  **MS. SISON:** I do, Your Honor. I just picked up the  
11 Ninth Circuit one, but if you'd like a different one, that  
12 would be fine.

13                  **THE COURT:** Have you shown it to the government?

14                  **MS. SISON:** Yes. I gave them a copy, sir.

15                  **THE COURT:** All right. I'll, of course, consider  
16 that at the appropriate time and decide at that point whether  
17 a hearing is necessary.

18                  **MS. SISON:** Thank you, Your Honor.

19                  **THE COURT:** All right. Let's have the witness come  
20 back around. Come back around and have a seat.

21                   **(Witness returned to the stand.)**

22                  **THE COURT:** All right. Bring the jury in.

23                   **(Jury entered the courtroom.)**

24                  **THE COURT:** Ms. Ford?

25                  **MS. FORD:** Thank you, Your Honor.

1 BY MS. FORD:

2 Q. Kendra, before we get back to where I left off, I want to  
3 ask you first, when you first met Darcy when you were a  
4 freshman, do you know approximately how old he was?

5 A. In his forties.

6 Q. Do you know his birth date?

7 A. October 10th, 1963.

8 Q. Okay. Going back to after the Carowinds trip, which was  
9 May 12, 2007, did you continue to have a relationship with  
10 him?

11 A. Yes.

12 Q. How often did you see him over the next year, so until  
13 May of 2008?

14 A. A lot, because he would still teach me to drive.

15 Q. And did anything sexual happen while you were driving?

16 A. Yes.

17 Q. What happened then?

18 A. Blow jobs.

19 Q. In that next year, did you ever have sex with him again?

20 A. I remember we went to one other hotel, and that's all I  
21 can remember.

22 Q. Do you remember where the hotel was?

23 A. Blowing Rock.

24 Q. And do you remember what kind of hotel it was?

25 A. I don't.

1 Q. Now, sometime after the Carowinds trip, did you move from  
2 Avery County?

3 A. Yes.

4 Q. Where did you move?

5 A. Johnson County, Tennessee.

6 Q. Is that where your family is from?

7 A. Yes.

8 Q. Were you living with your grandma there?

9 A. Yes.

10 Q. Did you enroll in high school there?

11 A. Yes.

12 Q. Did you see Michael Darcy while you were living in  
13 Tennessee?

14 A. Yes.

15 Q. Describe that for us.

16 A. He would still just basically teach me to drive.

17 Q. Would he drive over there?

18 A. Yes.

19 Q. Did he ever live over there?

20 A. Yes.

21 Q. Where did he live?

22 A. In Mountain City.

23 Q. Did he actually move from North Carolina to Mountain  
24 City?

25 A. Yes.



1 Q. And did he have an apartment or a house?

2 A. I think it was probably more of a house.

3 Q. Why did he move over there?

4 A. Because that's where I was.

5 Q. Did you ever have sexual relations with him at his  
6 house --

7 A. Yes.

8 Q. -- in Tennessee?

9 What happened?

10 A. Sex.

11 Q. When did -- did your relationship with him eventually  
12 end?

13 A. Yes.

14 Q. And when was that?

15 A. September.

16 Q. Of what year?

17 A. 2008.

18 Q. And tell us how that happened.

19 A. I broke up with him.

20 Q. Where?

21 A. It was at a park in Mountain City.

22 Q. Was anybody at the park besides you and him?

23 A. Yes.

24 Q. Who?

25 A. My mom came down there.

1 Q. How did you get to the park?

2 A. I drove.

3 Q. How did he get to the park?

4 A. He drove.

5 Q. Did you expect to see him at the park?

6 A. No.

7 Q. What did you tell him when you were breaking up with him?

8 Or what did you tell him to break up with him?

9 A. I really just gave him his ring back.

10 Q. Which ring?

11 A. A promise ring.

12 Q. After you broke up with him, what happened?

13 Do you remember approximately when that was?

14 A. It was September, like, 13th or 14th, I would think.

15 Q. Was it before or after your birthday?

16 A. Before.

17 Q. And that birthday, how old were you going to turn?

18 A. Seventeen.

19 Q. What happened after you broke up with him at the park?

20 A. He left the park. And my mom was still down there, so he  
21 came back to the park and told my mom everything about us.

22 Q. And eventually, did you and your mom go to the police?

23 A. Yes.

24 Q. What police agency did you go to?

25 A. Boone Police Department.

1 Q. And did you tell them about your relationship with  
2 Michael Darcy over the previous couple of years?

3 A. Yes.

4 Q. After you went to the police, did you hear anything from  
5 Michael Darcy?

6 A. Yes.

7 Q. What did you hear from him?

8 A. He sent me e-mails.

9 Q. What did he say in the e-mails?

10 A. He wanted to know what I said to the police, and he told  
11 me that he wrecked.

12 Q. That he got into an accident?

13 A. Yes.

14 Q. I'm going to show you what I've marked as Government's  
15 Exhibit 16 for identification purposes. Do you recognize  
16 that?

17 A. Yes.

18 Q. Is it a picture?

19 A. Yes.

20 Q. Who is it a picture of?

21 A. Me and Darcy.

22 MS. FORD: Your Honor, I'd move to introduce and  
23 publish Government's 16.

24 THE COURT: Let it be admitted.

25 (Government's Exhibit 16 received in

1                   evidence and displayed to the jury.)

2   **BY MS. FORD:**

3   **Q.**   Where was that picture taken?

4   **A.**   At his house in Boone.

5   **Q.**   And who is in the picture?

6   **A.**   Me and Darcy.

7   **Q.**   Was that taken prior to your breakup in September of  
8   2008?

9   **A.**   Prior means before?

10   **Q.**   Yes.

11   **A.**   Yes.

12   **Q.**   Now I'm going to show you what I've marked as  
13   Government's Exhibit 15. Do you recognize that?

14   **A.**   Yes.

15   **Q.**   What is it?

16   **A.**   A disk of pictures.

17   **Q.**   I'm sorry?

18   **A.**   A disk of pictures.

19   **Q.**   Who took the pictures on the disk?

20   **A.**   They were, like, pictures that he took on the Parkway and  
21   stuff like that.

22   **Q.**   Are there pictures of you on the disk?

23   **A.**   Yes.

24   **Q.**   Are there pictures of him and you on the disk?

25   **A.**   Yes.

1 Q. Who made the disk?

2 A. Darcy.

3 Q. And the writing that's on the cover of the CD case, whose  
4 writing is that?

5 A. Darcy.

6 Q. And actually, to be technically correct, Government's  
7 Exhibit 15 is a CD case with a CD inside. Is that correct?

8 A. Yes.

9 MS. FORD: Mr. Thorneloe, could you take the CD off  
10 and put it on the document equipment.

11 BY MS. FORD:

12 Q. Is there actually a picture on top of the CD?

13 A. Yes.

14 Q. And who is in the picture?

15 A. Me and him.

16 MS. FORD: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 BY MS. FORD:

19 Q. I'm going to show you what I've marked as Government's  
20 13. Take a look at it and tell me if you recognize it.

21 A. Yes.

22 Q. What is it?

23 A. It's, like, a slide show of pictures.

24 Q. Is it a DVD that has a slide show of pictures on it?

25 A. Yes.

1 Q. Who made it?

2 A. Darcy.

3 Q. Does it show pictures of the two of you throughout your  
4 relationship?

5 A. Yes.

6 MS. FORD: Your Honor, I'd move to introduce and  
7 publish Government's 13.

8 THE COURT: All right. Let it be admitted.

9 (Government's Exhibit 13 received in  
10 evidence.)

11 (DVD playing.)

12 MS. FORD: I'm going to stop it right there.

13 BY MS. FORD:

14 Q. Look at that picture, Kendra.

15 Who took that picture?

16 A. Darcy.

17 Q. Why?

18 A. That was when we went to Hickory when we were supposed to  
19 go to the sheriff's department.

20 Q. Well, why did you take that particular picture?

21 A. To show my mom.

22 (DVD playing.)

23 BY MS. FORD:

24 Q. Where was that picture taken?

25 A. The ski resort.

1 Q. And who took it?

2 A. Darcy.

3 Q. Were you working there?

4 A. Yes.

5 (DVD playing.)

6 Q. What are you showing in that picture?

7 A. Earrings.

8 Q. What are the earrings of?

9 A. Handcuffs.

10 Q. Where did you get the earrings?

11 A. I bought them.

12 Q. Why?

13 A. Because they matched the belly button ring.

14 (DVD playing.)

15 Q. Where was that picture taken?

16 A. On the Parkway.

17 Q. Is that when he was giving you driving lessons?

18 A. Yes.

19 Q. Did you give him blow jobs along the Parkway?

20 A. Yes.

21 (DVD playing.)

22 Q. Kendra, did you see this DVD before today?

23 A. Yes.

24 Q. Where?

25 A. He showed it to me.

1 Q. When?

2 A. It was at one of my brother's football games.

3 Q. Was it before you broke up with him?

4 A. Yes.

5 Q. And how did he show it to you?

6 A. On the computer.

7 Q. Where?

8 A. In his truck at my brother's football game.

9 (DVD playing.)

10 Q. Where was that picture taken?

11 A. At school.

12 Q. Is he the school resource officer in this photo?

13 A. Yes.

14 (DVD concluded.)

15 MS. FORD: Your Honor, if I could have a minute,  
16 please.

17 (Pause.)

18 MS. FORD: Your Honor, in case I haven't already --  
19 I know I asked her to identify this but I'm not sure that I  
20 actually moved it into evidence. It's Government's  
21 Exhibit 15.

22 THE COURT: You did move it into evidence.

23 MS. FORD: Thank you, Your Honor. I was just making  
24 sure.

25 No more questions for this witness.



1           **THE COURT:** Ms. Sison?

2           **MS. SISON:** Thank you, Your Honor.

3                           **CROSS-EXAMINATION**

4   **BY MS. SISON:**

5   **Q.** Kendra, will you let me know if you can't hear me?

6   **A.** Yes.

7   **Q.** Okay. When you started school, you -- at this school in  
8 Avery County, you started off at 13 but in a few weeks you  
9 became 14 your freshman year; is that right?

10 **A.** Yes.

11 **Q.** And you said that at that time you were living with your  
12 mother, your stepdad, and your brother.

13 **A.** Yes.

14 **Q.** And that was here in North Carolina.

15 **A.** Yes.

16 **Q.** And I take it your brother is older than you?

17 **A.** No. He's younger than me.

18 **Q.** He's younger. So how much younger?

19 **A.** He's 11.

20 **Q.** Is that how old he is now or then when you first started  
21 school?

22 **A.** That's how old he is now.

23 **Q.** And is your stepdad still with you as of today?

24 **A.** I don't live there anymore.

25 **Q.** Okay. But is he still living with your mom?

1 A. Yes.

2 Q. Okay. Were you close to him?

3 A. No.

4 Q. You didn't like him, I take it from your answer.

5 A. We just never really --

6 Q. Never clicked?

7 A. Yeah. Yeah.

8 Q. Were you close to your dad?

9 A. No.

10 Q. And I take it that during that time you -- when I say  
11 "during that time," like the beginning part of your freshman  
12 year, were you close to your mom too?

13 A. Yeah.

14 Q. Did you start to have just a little bit of problem with  
15 her at that time?

16 A. I don't remember.

17 Q. Okay. I take it while you were at school you had good  
18 girlfriends, like a best friend?

19 A. Yes.

20 Q. Could you tell me what was the name of your best friend  
21 during that time?

22 A. Hannah.

23 Q. Hannah?

24 A. Yes.

25 Q. And was Hannah in the Police Explorers with you?

1 A. No.

2 Q. So she never joined?

3 A. No.

4 Q. How many kids were in that group with you when you first  
5 started going?

6 A. Probably 15, I would guess.

7 Q. And during the time that you were in it, did that number  
8 increase or decrease?

9 A. I think it pretty much just stayed the same.

10 Q. But different kids sometimes, right?

11 A. I know of a couple that moved away.

12 Q. And then other kids took their place?

13 A. Yes.

14 Q. And you said initially that the adviser of that program  
15 was a man by the name of Bob Johnson?

16 A. Yes.

17 Q. And then he was replaced sometime during your freshman  
18 year with Mr. Darcy.

19 A. Yes.

20 Q. Now, Mr. Darcy, in addition to being an adviser of the  
21 Police Explorers, he also did other things at the school,  
22 right?

23 A. Yes.

24 Q. And so during your freshman year you got to know him  
25 pretty well?

1 A. Yes.

2 Q. Okay. And you got close to him, right?

3 A. Yes.

4 Q. And you felt he was somebody that you could talk to?

5 A. Yes.

6 Q. And I think you said that you talked to him about school  
7 issues, family issues, problems with your mom, things like  
8 that.

9 A. Yes.

10 Q. And I take it that he also provided the same kind of  
11 guidance or mentoring to other students. Do you know?

12 A. Yes.

13 Q. And during this time, you said that he gave you his cell  
14 number?

15 A. Yes.

16 Q. And I think you used that to text or IM and call him,  
17 right?

18 A. Yes.

19 Q. Did he do the same thing with the other kids as far as  
20 you know?

21 A. Yes.

22 Q. And so it would be fair to say that you became good  
23 friends with him during that year and you became more than  
24 friends, right?

25 A. Yes.

1 Q. And when I say that, I think you even said that you went  
2 from friends to boyfriend/girlfriend.

3 A. Yes.

4 Q. And that was your own choosing; he didn't make you become  
5 his girlfriend.

6 A. Yes.

7 Q. Okay. And you actually fell in love with him during that  
8 time.

9 A. Yes.

10 Q. And I take it that as far as you knew he fell in love  
11 with you as well?

12 A. Yes.

13 Q. And so you talk about this ring. Actually, it was his, I  
14 think, high school ring that he gave you?

15 A. I wore his high school ring sometimes when I was with  
16 him.

17 Q. Okay. And that was the ring that we saw on the chain?

18 A. Yes.

19 Q. And you didn't wear that all the time but just when you  
20 were around him.

21 A. Yes.

22 Q. And so I take it that you wanted to keep your  
23 relationship a secret from everybody else.

24 A. Yes.

25 Q. Okay. But he was acquainted with your family, wasn't he?

1 A. Yes.

2 Q. Like he knew your mom?

3 A. Yes.

4 Q. And he actually had had conversations with her?

5 A. Yes.

6 Q. And he did come see you when your mom was home?

7 A. Yes.

8 Q. Had he ever had dinners with you and your family, or  
9 meals?

10 A. Yes.

11 Q. And that's when you and your mom and brother and stepdad  
12 were present?

13 A. I don't know about my stepdad, but my mom, my brother.

14 Q. And you?

15 A. Yes.

16 Q. And were those any -- could you estimate how many times  
17 he did that while you guys were still living in North  
18 Carolina?

19 A. Probably ten.

20 Q. Ten times?

21 A. (Nods head up and down.)

22 Q. Any of those times like mealtimes?

23 A. Yes.

24 Q. And so he came to your house to eat?

25 A. We would go out to eat.

1 Q. Okay. Like to a restaurant or a fast food place?

2 A. Yes.

3 Q. And that would be everybody but your stepdad?

4 A. Yes.

5 Q. Okay. Did he also go on vacation with you and your  
6 family?

7 A. Yes.

8 Q. Could you tell me when that was?

9 A. It was the summer of -- it was the summer before my  
10 junior year.

11 Q. Okay. So are you a senior now?

12 A. I graduated.

13 Q. Oh, you graduated. Okay. So that would have been --  
14 just correct me -- 2007 or 2006?

15 A. 2007.

16 Q. And how long was that vacation?

17 A. I'm sorry?

18 Q. How long was the vacation for?

19 A. Four days, or maybe a week.

20 Q. Do you remember where you went?

21 A. The first week in August.

22 Q. And what city or places did you guys go to?

23 A. Pensacola, Florida.

24 Q. Pardon?

25 A. Pensacola, Florida.

1 Q. And your mom invited him?

2 A. Yes.

3 Q. All right. And you talked about he had given you some  
4 gifts, right?

5 A. Yes.

6 Q. So in addition to that belly ring, did he give you  
7 stuffed animals?

8 A. No, not that I remember.

9 Q. Okay. What other gifts did he give you?

10 A. It was this thing you plug into your cigarette lighter  
11 that you can play, like, an iPod or whatever through the  
12 radio.

13 Some shirts. That's all I remember.

14 Q. All right. And those are things that you accepted  
15 willingly?

16 A. Yes.

17 Q. And so I take it then that there were times that it  
18 wasn't just you and him; there were other people around, like  
19 you said your family.

20 Were there also times when other kids in the Police  
21 Explorers Club were around when the two of you were together?

22 A. Just at school or, like, ball games was it.

23 Q. And so how many times would that be when it wasn't just  
24 you and he alone?

25 A. It would only be just, you know, regular school days.



1 Q. Okay. And how often did the Police Explorers meet?

2 A. I think about once a month.

3 Q. Once a month. All right.

4 You also -- I want to go to when you said that you went  
5 to a hotel in Hickory.

6 You didn't have sex then, did you?

7 A. No.

8 Q. Did you ever give Darcy any gifts yourself?

9 A. Yes.

10 Q. And what would that be?

11 A. A stuffed animal that I got -- or that I won from Sea  
12 World.

13 Q. Okay. The ring he gave you, the one that you wore on the  
14 chain, I think you called it a promise ring?

15 A. No. That was a different ring.

16 Q. Okay. Can you describe that promise ring?

17 A. It had -- it was silver, or white gold or something, and  
18 it had, like, three little diamonds on it.

19 Q. And when did he give that to you?

20 A. Probably it was my sophomore year, in the fall, I think.

21 Q. Okay. And just what does a promise ring mean to you?

22 A. Just that we would be together.

23 Q. Okay. Kind of like promise to be together?

24 A. Yes.

25 Q. Did Mike, or Mr. Darcy, ever talk to you about getting

1 married and being together forever?

2 A. Yes.

3 Q. Okay. And was that part of the promise ring?

4 A. Yes.

5 Q. And when I was looking at that song video, the one we  
6 just saw before Ms. Kimlani Ford stopped asking you questions,  
7 there was a photo of -- it was a diamond ring that was shaped  
8 in a heart. Do you remember seeing that?

9 A. Yes.

10 Q. What did that mean to you?

11 A. It was just a ring that we had looked at on the internet.

12 Q. And you liked that ring, I take it?

13 A. Yes.

14 Q. And from what I saw, it looked like that was something  
15 that he probably wanted to give you. Is that your  
16 understanding?

17 A. Yeah. Yeah.

18 Q. Did you and he talk about taking a trip together after  
19 you turned 18?

20 A. Yes.

21 Q. Okay. And then that letter that you said he gave to you,  
22 there was some language in there about -- and I just want to  
23 make sure I get this right, Kendra -- that he expected to be  
24 with you forever?

25 A. Yes.

1 Q. Okay. And that he -- and there towards the end he said  
2 that the happy days of his life, I think -- let me just read  
3 it to you.

4 "I can't wait until I am" -- and I think he was talking  
5 about writing in your yearbook -- "because I know we only have  
6 a few months until the happiest day of our lives." Is that  
7 right?

8 A. Yes.

9 Q. Now, was that in reference to your turning 18?

10 A. Yes.

11 Q. And that was when he had hoped to take you on a cruise?

12 A. Yes.

13 Q. And was it your understanding that he had hoped he would  
14 marry you?

15 A. Yes.

16 Q. Now, when -- I want to talk about your job at the Beech  
17 Mountain ski place.

18 Were there other kids there working? And when I say  
19 kids, I mean kids under the age of 18.

20 A. No. I think I was probably the only one under 18. There  
21 was other college students that worked there but I think I was  
22 probably the only one under 18.

23 Q. Okay. But there were other people working with the two  
24 of you?

25 A. Yes.

1 Q. And your mom -- even though Mr. Darcy had filled out the  
2 top of that employment form, did your mom sign it?

3 A. Yes.

4 Q. Okay. So she knew you were going to work there?

5 A. Yes.

6 Q. And she was okay with that?

7 A. Yes.

8 Q. And she knew that he was taking you there?

9 A. Yes.

10 Q. And she didn't have any concerns about that at all?

11 A. No.

12 Q. In fact, you never told anybody about the relationship,  
13 your sexual relationship, with Mr. Darcy, did you?

14 A. No.

15 Q. Not your mom?

16 A. No.

17 Q. Not your stepdad?

18 A. No.

19 Q. Not your girlfriend?

20 A. No.

21 Q. So nobody knows about it?

22 A. Right.

23 Q. And so it was a secret between the two of you?

24 A. Yes.

25 Q. And you said that he also was giving you driving lessons?

1 A. Yes.

2 Q. And your mom didn't want to give them to you because she  
3 was scared, right?

4 A. Yes.

5 Q. Okay. How long did he give you driving lessons for?

6 A. From the time I got my permit until I got my license.

7 Q. And what ages are those?

8 A. Fifteen. And then once you're sixteen you can get your  
9 license.

10 Q. All right. Did anybody else give you driving lessons  
11 besides him?

12 A. My mom tried once, but...

13 Q. But she said forget it?

14 A. Yeah.

15 Q. During -- and I can't tell from here, Kendra, but I saw  
16 in the slide show that you had braces?

17 A. Yes.

18 Q. Do you have them now?

19 A. No.

20 Q. When did you get them removed?

21 A. Towards the start of my junior year.

22 Q. All right. So that was two years ago, about?

23 A. Yes.

24 Q. And I'm moving forward to when you guys went to  
25 Carowinds.

1 Now, did your mom sign a permission slip or did she just  
2 say you could go?

3 A. She signed the permission slip.

4 Q. So she knew exactly where you were going?

5 A. Yes.

6 Q. Was she given information as to the concert and what  
7 you -- and going to the Carowinds amusement park? That's what  
8 she knew you were going there for, right?

9 A. Yes.

10 Q. And you said that there were about 15 to 20 kids. And I  
11 take it you mean like school kids.

12 A. Yes.

13 Q. And you said that there were three other adults. And  
14 when you said adult, I took it to mean like parents, not  
15 students who had turned 18.

16 A. Yes.

17 Q. So I take it Pat Winters was one of them?

18 A. Yes.

19 Q. But you can't remember the other two parents?

20 A. I don't know their names. I just know who their kid was.

21 Q. Do you remember today what their kids' names were?

22 A. Tyler.

23 Q. Tyler. Oh, they were Tyler's parents?

24 A. Yes.

25 Q. So they both went?

1 A. Yes.

2 Q. And so you talked about breaking up with him sometime in  
3 September 2008. So that was about a year ago?

4 A. Yes.

5 Q. All right. And then you broke up with him by giving him  
6 back his -- and I just want to be sure. Was it the class ring  
7 or the promise ring you gave back to him?

8 A. The promise ring.

9 Q. And so at that point, I take it, you wanted to see other  
10 people. Is that right? Or you just wanted to break it off  
11 with him?

12 A. I just wanted to break it off with him.

13 Q. And I take it he was upset that, you know, you guys  
14 weren't going to be together anymore.

15 A. Yes.

16 Q. And he tried to talk you out of breaking up, right?

17 A. Yes.

18 Q. But at that point you said, no, it's over.

19 A. Yes.

20 Q. And he was pretty upset?

21 A. Yes.

22 Q. And so at that point he still wanted to be with you,  
23 right?

24 A. Yes.

25 Q. Even though he left the park?

1 A. Yes.

2 Q. Would it be fair to say that he hoped you would change  
3 your mind?

4 A. Yes.

5 Q. And actually, when your mom went -- she's the one that  
6 wanted you to go to the police, right?

7 A. Yes.

8 Q. You didn't want to go?

9 A. No.

10 Q. You didn't want to get him into any kind of trouble.

11 A. Right.

12 Q. Okay. And you just wanted to break off with him.

13 A. Yes.

14 Q. And at this point I take it you don't have any negative  
15 feelings about Michael Darcy.

16 A. Maybe a little.

17 Q. A little. Yeah. You're upset about what happened,  
18 right?

19 A. Yeah.

20 Q. And I bet you just wish it would have just gone away.

21 A. Yes.

22 Q. Now, some of the photos that we saw in that slide show,  
23 Kendra, they had been cut, right, some of them?

24 A. Yes.

25 Q. And some of them actually had other people in them but he



1 had just cut out the picture of you and him, correct?

2 A. Yes.

3 Q. Like, I think there is one where you were standing with  
4 him and it was just the two of you, but it was a narrow  
5 picture. Was there another person next to him or you?

6 A. Yes.

7 Q. Who would that have been?

8 A. It was this girl who went to school with me.

9 Q. Was that Hannah?

10 A. No.

11 Q. So it was another girl?

12 A. Yes.

13 Q. And was it more than one picture in that slide show?

14 A. That's the only one that I really noticed.

15 MS. SISON: Thank you, Kendra.

16 Thank you, Your Honor. I have no more questions.

17 THE COURT: Anything further?

18 MS. FORD: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MS. FORD:

21 Q. Kendra, Ms. Sison asked you something about whether or  
22 not you had sex in the hotel in Hickory.

23 A. Yes.

24 Q. The first hotel you went to, correct?

25 A. Right.

1 Q. And you didn't have sex there, correct?

2 A. Right.

3 Q. Every other time you went to a hotel, did you have sex in  
4 the hotel?

5 A. Yes.

6 Q. She also mentioned that the defendant went on a family  
7 vacation with you to Pensacola, Florida.

8 A. Yes.

9 Q. Did you have sex with him or oral sex with him in  
10 Florida?

11 A. Oral.

12 Q. I'm sorry. Say it again?

13 A. Oral sex.

14 Q. Where?

15 A. At the hotel.

16 Q. In Florida?

17 A. Yes.

18 Q. She also mentioned several times on cross that you and  
19 the defendant were keeping your relationship a secret,  
20 correct?

21 A. Yes.

22 Q. Why were you keeping it a secret?

23 A. Because it was illegal.

24 Q. You're going to have to say that louder.

25 A. Because it was illegal.

1 Q. Did you and Mr. Darcy talk about the fact that it was  
2 illegal?

3 A. Yes.

4 Q. What did you talk about?

5 A. Well, just that if he got -- we got caught, that this  
6 would happen.

7 MS. FORD: No other questions, Your Honor.

8 THE COURT: Ms. Sison.

9 MS. FORD: Oh, I do have one more question. I'm  
10 sorry, Your Honor.

11 BY MS. FORD:

12 Q. Did you have code names for each other?

13 A. Yes.

14 Q. What were they?

15 A. Kiera and Enrique.

16 Q. Who was Kiera?

17 A. Me.

18 Q. How do you spell it?

19 A. K-i-e-r-a.

20 Q. And who was Enrique?

21 A. Darcy.

22 Q. Why did you have code names?

23 A. So, like, you know, texting and stuff, it wouldn't be  
24 like his name on my phone or my name on his.

25 MS. FORD: I don't have any other questions,

KENDRA - RECROSS-EXAMINATION  
~~JANE SMITH - DIRECT EXAMINATION~~

1 Your Honor.

2 **RECROSS-EXAMINATION**

3 **BY MS. SISON:**

4 **Q.** Kendra, so you knew that it was illegal to have a sexual  
5 relationship with him, right?

6 **A.** Yes.

7 **Q.** And that if you and he had gotten caught, he would get  
8 into trouble.

9 **A.** Yes.

10 **Q.** And that would definitely end the relationship?

11 **A.** Yes.

12 **MS. SISON:** Thank you.

13 **MS. FORD:** I don't have any more questions, Your  
14 Honor. May she be released, once she's allowed to step down?

15 **THE COURT:** Yes. She may step down and is released.

16 **MS. FORD:** Thank you, Your Honor.

17 **(Witness stood down.)**

18 **THE COURT:** All right. Call your next witness.

19 **MR. THORNELOE:** Your Honor, the government calls  
20 Jane Smith.

21 **JANE SMITH,**  
22 **being duly sworn, was examined and testified as follows:**

23 **DIRECT EXAMINATION**

24 **BY MR. THORNELOE:**

25 **Q.** Good afternoon, Ms. Smith. Would you please state your

1 full name for the record.

2 A. Sylvia Jane Smith.

3 Q. And, Ms. Smith, where do you live right now?

4 A. Mountain City, Tennessee.

5 Q. Where were you living in what would have been the fall of  
6 2005?

7 A. Avery County, North Carolina.

8 Q. And who lived with you?

9 A. My daughter, my son, and my husband.

10 Q. And who is your daughter?

11 A. Kendra.

12 Q. Okay. And in the fall of 2005, how old was Kendra?

13 A. Fourteen. No, thirteen. I'm sorry.

14 Q. And where did she attend school?

15 A. Avery County High School.

16 Q. Okay. Do you recognize the photograph in front of your  
17 screen?

18 A. I don't have one.

19 Q. I'm sorry. How about now?

20 A. Yes, I do.

21 Q. And who is that?

22 A. That's my daughter.

23 Q. And do you know when that photograph was taken?

24 A. Yes, sir, I do.

25 Q. When would that have been?

1 A. That was when she was 13.

2 Q. Okay. Was that her freshman year of high school,  
3 approximately?

4 A. Yes, sir.

5 MR. THORNELOE: Your Honor, this previously was  
6 marked as Government's Exhibit 1.

7 BY MR. THORNELOE:

8 Q. Do you recognize the writing on the back?

9 A. Yes, I do.

10 Q. And who wrote that?

11 A. Kendra.

12 THE COURT: All right. Let it be admitted.

13 MR. THORNELOE: Did Your Honor say let it be  
14 admitted?

15 THE COURT: Yes.

16 MR. THORNELOE: Thank you, Your Honor.

17 (Government's Exhibit 1 received in  
18 evidence.)

19 BY MR. THORNELOE:

20 Q. So that's how your daughter looked when she was a  
21 freshman at Avery County High School; is that right?

22 A. Yes, sir.

23 Q. Okay. And in her freshman year, was her dad a part of  
24 her life then?

25 A. Very little.

1 Q. Okay. Was there an activity that Kendra became involved  
2 with her freshman year?

3 A. Yes, sir, there was.

4 Q. And what was that?

5 A. Police Explorers and Health Explorers.

6 Q. All right. What did you learn about the Police Explorers  
7 as your daughter became involved? What did you know about the  
8 organization, generally?

9 A. It was an organization in which they taught the kids a  
10 little bit about police work and what was involved with it,  
11 and it was kind of to encourage them to maybe pursue that as a  
12 career.

13 Q. Okay. And who were the leaders of the Police Explorers  
14 program?

15 A. When she first entered the program, it was Officer John  
16 Millen and Officer Johnson.

17 Q. So those were sworn police officers?

18 A. Yes, sir, they were.

19 Q. And were they eventually replaced by someone else?

20 A. Yes, sir, they were.

21 Q. And who was that?

22 A. Officer Darcy.

23 Q. Do you see him here today?

24 A. Yes, sir, I do.

25 Q. Could you point him out to the Court, please?

1 A. Sitting right there in the red shirt.

2 MR. THORNELOE: Okay. Your Honor, I ask that the  
3 record reflect that the witness has identified the defendant,  
4 Michael Darcy.

5 THE COURT: Let the record so show.

6 BY MR. THORNELOE:

7 Q. And, Ms. Smith, when you learned that Kendra had joined  
8 the Police Explorers, how did you feel about that generally?

9 A. Well, I knew she was very interested in the field of  
10 police work, and I was okay with it.

11 Q. Did you feel like it would be an enriching activity for  
12 her?

13 A. Yes, I did.

14 Q. What were your expectations for the police officers who  
15 were the leaders? How did you expect them to act toward the  
16 students?

17 A. Well, I expected them to act as leaders and as teachers  
18 for them, to guide them and, you know, protect them when they  
19 were involved in activities.

20 Q. Okay. All right. Eventually, did you get to know the  
21 defendant, Michael Darcy?

22 A. Yes, sir, I did.

23 Q. Okay. And how were you introduced to the defendant?

24 A. My daughter was in the hospital with a kidney stone and  
25 he came to visit her, and I believe that was the first time



1 that I met him.

2 Q. All right. Do you recall when that was?

3 A. Yes, sir. That was July 3rd and 4th of 2005. No. I'm  
4 sorry. 2006.

5 Q. So would that have been after Kendra's freshman year?

6 A. Yes. I think that's when that was.

7 Q. And so how old would Kendra have been then?

8 A. She was 14.

9 Q. All right. And what was your general impression of the  
10 defendant?

11 A. He was very nice.

12 Q. Would you say he became a family friend?

13 A. Yes, most definitely.

14 Q. And did you trust him?

15 A. Yes, very much.

16 Q. Was any of the reason you trusted him because of his  
17 position?

18 A. Yes, a lot.

19 Q. All right. Did Kendra's relationship with Darcy continue  
20 from that point, as best as you could tell?

21 A. Yes, sir, it did.

22 Q. Did you work -- what's your work schedule, generally?

23 A. I work usually Monday through Friday from 6 in the  
24 morning until 2:30 in the afternoon, with an occasional  
25 weekend.

1 Q. Okay. In the summer of 2006, was Kendra sometimes left  
2 home alone?

3 A. Yes, sir.

4 Q. Did you trust that she was old enough to take care of  
5 herself?

6 A. Yes, sir.

7 Q. And then her sophomore year, did she continue with the  
8 Police Explorers activities?

9 A. Yes, sir, she did.

10 Q. And just to you, did it seem like similar activities as  
11 previous years?

12 A. Yes.

13 Q. And to your knowledge, what kind of things was she  
14 actually -- did you believe her to be doing in the Police  
15 Explorers?

16 A. She would stay after school at times when they were  
17 having different activities, ball games and such, and she  
18 would -- you know, if they had to walk through the parking lot  
19 to check the vehicles, she would go with the police officer  
20 and the other students. They had to, like, monitor the  
21 grounds, you know, make sure no one had alcohol or anything  
22 like that. And they had uniforms and they would walk with  
23 them; they would be with the police officers.

24 Q. Okay. In September of 2006, Kendra's sophomore year --  
25 tell me again, when was her birthday?

1 A. September 15th.

2 Q. And so how old did she turn in September of 2006?

3 A. She turned 14 in 2006.

4 Q. Okay. And at that point in time, did she ever go on any  
5 field trips to your knowledge with the Explorers?

6 A. Yes, sir, she did.

7 Q. All right. Do you remember any particular field trips  
8 from September of 2006?

9 A. Yes, sir. One was to the, I think it was, Catawba County  
10 Detention Center, to the courthouse, jail. I don't remember  
11 specifically the others.

12 Q. Okay. Ms. Smith, I'm going to show you a couple of items  
13 right now.

14 Ms. Smith, this has previously been entered into evidence  
15 as Government's Exhibit 6. Do you recognize this document?

16 A. Yes, sir, I do.

17 Q. What is it?

18 A. It's a permission slip that I signed for my daughter to  
19 go to the Caldwell County Sheriff's Department and jail.

20 Q. Okay. And I'm going to zoom in to your signature. Do  
21 you recognize that signature?

22 A. Yes, sir.

23 Q. Whose signature is it?

24 A. It's mine.

25 Q. Do you remember signing it?

1 A. Yes, sir, I do.

2 Q. Now I'm going to show you what's previously been marked  
3 as Government's Exhibit 7. Do you recognize this photograph?

4 A. Yes, sir, I do.

5 Q. And what is it?

6 A. It's a picture of my daughter standing in front of the  
7 Catawba County Justice Center.

8 Q. And is it related to this permission slip I had shown you  
9 previously?

10 A. To my knowledge, it is, yes.

11 Q. What did you understand about what that picture meant  
12 when she showed it to you?

13 A. That they had actually gone and toured the justice  
14 center, just as they said they were going to.

15 Q. Ms. Smith, around Christmastime of 2006, did Kendra take  
16 on a job?

17 A. Yes, sir.

18 Q. And what was that job?

19 A. She sold lift tickets on Beech Mountain ski slope.

20 Q. And did anyone else you knew take a job there as well?

21 A. Yes, sir.

22 Q. And who was that?

23 A. Officer Darcy.

24 Q. And how did Kendra get this job?

25 A. With his assistance.

1 Q. Okay. And their schedules, did their schedules ever  
2 coincide?

3 A. Yes. All the time.

4 Q. All the time?

5 And how did Kendra actually get to her job every time she  
6 went?

7 A. I would take her to an area in what was called Inner  
8 Shields (ph), it's a little area in Avery County, to the bank  
9 that was there, and I would meet Officer Darcy, and he would  
10 take her from there.

11 Q. Okay. Was anybody else going with him?

12 A. No, sir.

13 Q. So it was just Officer Darcy and your daughter, Kendra?

14 A. Yes.

15 Q. And how often did this occur?

16 A. She usually worked three to four evenings a week, and  
17 sometimes on weekends.

18 Q. And on the weekends, how long was one of her shifts?

19 A. Well, it was supposed to be usually six hours or so, but  
20 a lot of the times on weekends she would call and say she was  
21 going to work a double because they were shorthanded, somebody  
22 called in or something.

23 Q. Okay. And as far as you knew, that's what she was  
24 actually doing?

25 A. Yes, sir.

1 Q. And did that bring her back later at night?

2 A. No. It was about the same time at night. You know, it  
3 was until they closed.

4 Q. Okay. And who would bring her back?

5 A. Officer Darcy.

6 Q. Every time?

7 A. Yes, sir.

8 Q. Okay. Did Officer Darcy ever offer to give Kendra  
9 driving lessons?

10 A. Yes, sir.

11 Q. And did you let him do that?

12 A. Yes, sir.

13 Q. And how did you feel about Officer Darcy giving her  
14 driving lessons?

15 A. I was actually very thankful because there was no one  
16 else to teach her except me, and I was too nervous.

17 Q. Okay. So you felt -- did you feel as though it was a  
18 favor to the family?

19 A. Yes, I did.

20 Q. And you trusted him to let her drive the vehicle with  
21 Officer Darcy?

22 A. Yes, I did.

23 Q. All right. I want to move ahead just a little bit to the  
24 spring of 2007.

25 And so what grade year would that have been for Kendra

1 still?

2 A. Sophomore.

3 Q. And how old would she have been?

4 A. Fifteen.

5 Q. Okay. Did there come a time when a Police Explorers  
6 field trip came up?

7 A. Yes, sir.

8 Q. And how did you first learn about that?

9 A. Kendra told me about it.

10 Q. And what did you know about the field trip?

11 A. That they were going to take a trip to Carowinds and to a  
12 concert.

13 Q. Okay. And how did you feel about the field trip when you  
14 heard about it?

15 A. I was okay with it.

16 Q. And who was actually organizing the field trip?

17 A. Officer Darcy.

18 Q. All right. Did you get any information on the field trip  
19 or permission slip or anything?

20 A. Yes, sir. I signed a permission slip. I also saw the  
21 information that he had gotten about the concert, the times  
22 and everything.

23 Q. Ms. Smith, I'm going to show you a document now.

24 Ms. Smith, this has previously been entered into evidence  
25 as Government's Exhibit 12. Do you see the document on your

1 screen?

2 A. Yes, sir.

3 Q. And what is it to you?

4 A. It is the permission slip that I signed for my daughter  
5 to attend the Carowinds trip and the concert.

6 Q. I'm going to zoom in now on your signature, and once I've  
7 done that, take a look for me and confirm if that is indeed  
8 your signature.

9 A. Yes, sir, it is.

10 Q. Okay. Were you ever invited to attend this trip with  
11 your daughter?

12 A. No, sir.

13 Q. Okay. What, if anything, did you know about other  
14 parents going on the trip?

15 A. I knew that at least one other mother and a mom and dad  
16 of one of the other kids were going.

17 Q. Okay. And did you feel like you could trust the  
18 defendant to organize a trip and care for the individuals on  
19 it?

20 A. Yes, sir.

21 Q. Had anything happened to that point to make you believe  
22 otherwise?

23 A. No, sir.

24 Q. All right. Well, let's -- if we can, let's go to the  
25 actual day of the trip.



1 A. Okay.

2 Q. Do you remember what day it was on exactly?

3 A. It was -- they left on Saturday morning, very early  
4 Saturday morning.

5 Q. Okay. Do you happen to remember what date it was?

6 A. I don't remember the date.

7 Q. Do you remember what month it was in?

8 A. I think it was May.

9 Q. And where did everybody meet up for the trip?

10 A. In the high school parking lot.

11 Q. How did Kendra get there?

12 A. I took her.

13 Q. And when you got there, could you just describe what you  
14 saw?

15 A. There were three or four other cars already there. Some  
16 of the kids were just out standing in the parking lot talking.

17 Q. And who did you see there?

18 A. Officer Darcy was there, and I don't remember the kids'  
19 names that were already there.

20 Q. Did you see any other parents there?

21 A. Not at first, but they did arrive while I was there.

22 Q. And once -- once you got there with Kendra, what did you  
23 see Kendra do?

24 A. She got out and got her overnight bag and put it in  
25 Mr. Darcy's truck.

1 Q. Did you see Kendra leave the area?

2 A. Yes, I did.

3 Q. And who was she with when she left the high school?

4 A. Officer Darcy.

5 Q. Was anybody else in the car?

6 A. No, sir.

7 Q. Okay. When was the next time you saw Kendra?

8 A. When she returned on Sunday evening.

9 Q. Okay. Did she say anything to you at the time about the  
10 trip?

11 A. No. Just, you know, general things; they had a good  
12 time, you know, and they enjoyed the concert and everything.

13 Q. Following the trip, this trip in May, did anything come  
14 up that started to give you concerns about Officer Darcy?

15 A. Yes, sir.

16 Q. And once you felt some concern, did you at that time --  
17 we're talking about May of 2007, in that area -- did you say  
18 anything to Officer Darcy?

19 A. Yes, sir, I did.

20 Q. Did you confront him about any concerns you were having?

21 A. Yes, I did.

22 Q. And what did you say to him?

23 A. I told him that I had always been very concerned about  
24 Kendra's -- it had always been a great fear of mine that  
25 someone would abuse her. You know, it was just a mother's

1 terrible fear. And I told him that if I ever found out that  
2 he had done anything inappropriate to her that I would kill  
3 him.

4 Q. And what was his response to you?

5 A. He assured me he had never touched or done anything  
6 inappropriate to her.

7 Q. And did you feel -- did that alleviate your concerns about  
8 him?

9 A. After I had talked more with him and more with Kendra,  
10 yes, I did feel better about it.

11 Q. Okay. That summer of 2007, did Kendra move?

12 A. Yes, she did.

13 Q. And where did she go?

14 A. She moved to Mountain City, Tennessee.

15 Q. And why did she do that?

16 A. She said that she did not want to return to Avery High  
17 School to complete her education, her high school education  
18 there; she wanted to go to Mountain City.

19 She had been being harassed terribly by some of the other  
20 kids and I think even by some of the teachers that had been  
21 saying some very crude comments about her in her earshot, you  
22 know, not directly to her but definitely to where she could  
23 hear what they were saying.

24 Q. Did all that arise after the Carowinds trip?

25 A. Yes, sir.

1 Q. Do you think it was because of the Carowinds trip?

2 A. Yes, sir.

3 Q. All right. And so Kendra, after that, where -- tell me  
4 again what county high school she started going to.

5 A. Johnson County High School.

6 Q. And so for the rest of her high school career, is that  
7 where she went?

8 A. Yes, sir.

9 Q. All right. Well, let's go forward again, if you can, to  
10 September of 2008.

11 A. Okay.

12 Q. And in September of 2008, how old did Kendra turn?

13 A. Sixteen.

14 Q. Are you sure?

15 A. No. Let me think a second. I'm sorry. Let's see.  
16 She turned -- let's see.

17 Q. Was she born in '91?

18 A. Yeah. She turned 16 in --

19 Q. 2008?

20 A. Yes.

21 Q. That would have been 17 years later?

22 A. Yes.

23 Q. Okay. So how old did she turn in September of 2008?

24 A. 2008 she turned 17. Yeah. I'm sorry.

25 Q. That's no problem.

1           So did there come a day when Officer Darcy, or the  
2 defendant, showed up unexpectedly at your door?

3   A.    Yes, sir.

4   Q.    Did you also -- do you also have a home there in  
5 Tennessee?

6   A.    Yes, I do.

7   Q.    Okay. So tell me exactly what happened when the  
8 defendant showed up at your door.

9           When do you think that was?

10   A.   That was September 14th.

11   Q.   Okay. Why do you remember that it's September 14th?

12   A.   Because it was the day before Kendra's birthday.

13   Q.   Okay. And if you could just describe for me what it was  
14 like -- what happened exactly when he showed up at your door.

15   A.   Well, I hadn't seen or heard from him for a while so I  
16 was kind of surprised. I invited him in. He had a card in  
17 his hand, and I saw that it was for Kendra. He didn't -- he  
18 did not actually come into the house; he just came to the  
19 door.

20           I said to him, oh, you just missed Kendra. I said,  
21 she'll be very sorry that she missed you; do you want me to  
22 call her and have her come back home? And I told him she had  
23 just gone to the park.

24           And he said, oh, no, no. That's okay. He said, did she  
25 go to the one just outside of town? And I told him that yes,

1 that's where she had gone.

2 Q. Okay. What happened with the card?

3 A. He handed it to me and I took it.

4 Q. Ms. Smith, I'm going to show you a card now that's  
5 previously been marked as Government's Exhibit 14 for  
6 identification.

7 Does that envelope look familiar?

8 A. Yes, sir.

9 Q. Okay. And this is the card that was inside of the  
10 envelope. Does that also look familiar?

11 A. Yes, sir.

12 Q. Okay. And could you tell me what is this card and where  
13 did you see it?

14 A. I think the first time I saw this one was in some things  
15 that Officer Darcy sent to my home that same week.

16 Q. Okay. So this isn't the actual card that he handed you  
17 that day?

18 A. No.

19 Q. Is that correct?

20 All right. We'll come back to this card in just a  
21 minute, okay, Ms. Smith?

22 A. Okay.

23 Q. Ms. Smith, after you explained to Mr. Darcy where your  
24 daughter was located, did he leave the area?

25 A. Yes, he did.

1 Q. Okay. And as far as you knew, what happened next in this  
2 story that day?

3 A. Just a few minutes, maybe 10 or 15 minutes after he left,  
4 my daughter called me and asked me to come to the park.

5 Q. Okay.

6 A. And that was very unusual, so I was asking her, you know,  
7 is there something wrong, what's wrong. And she said, mama,  
8 just come to the park; please, just come to the park. And she  
9 said don't freak out, just please come to the park. I said  
10 all right, I'm on my way.

11 And I drove as quickly as I could because I could tell  
12 that something wasn't right in her voice and went directly to  
13 the park where she was.

14 Q. Okay. And when you found her at the park, was anyone  
15 else there at the park?

16 A. Yes, sir.

17 Q. Who was that?

18 A. Officer Darcy.

19 Q. All right. And how did Kendra appear to you?

20 A. She was very pale and seemed nervous, kind of shaky.

21 Q. Did you go up and talk to her?

22 A. Actually, she walked over to my car.

23 Q. Okay. At that point did you know anything was wrong  
24 between her and the defendant?

25 A. I wasn't sure. They both appeared very pale and nervous,

1 like I had never seen them before, but I didn't know that  
2 something was wrong.

3 Q. Did you stay at the park?

4 A. Yes, I did.

5 Q. What about the defendant? Did you see him go anywhere?

6 A. When I pulled up, he pulled away.

7 Q. Okay. Could you tell where he went at first?

8 A. No. I didn't pay any attention.

9 Q. Okay. But you stayed at the park; is that right?

10 A. Yes, I did.

11 Q. What's the next thing that happened?

12 A. I asked -- Kendra told me, she said, mama, it's okay now.  
13 If you want to go back home, you can go. She said, it's okay  
14 now.

15 I said, no, it's okay. I said, what's going on? And she  
16 said, oh, just some boy was bothering me and wouldn't leave me  
17 alone, kept asking me out, and I didn't want to go and -- but  
18 she said Darcy told him that he was a police officer and that  
19 he should leave, and he left.

20 And then I asked Kendra, I said, well, since I'm here, do  
21 you want to walk the trail with me, and she said sure. And  
22 then she said, well, don't you want to just come watch us  
23 shoot basketball, and I said sure, that's fine.

24 So I just walked over and sat down on the bench in front  
25 of the basketball court and she began playing basketball



1 again.

2 Q. Okay. And what's the next notable thing that happened?

3 A. I hadn't set there but a minute when my phone rang, and  
4 it was Officer Darcy.

5 Q. And what did he say to you on the phone?

6 A. He asked me where I was.

7 Q. And did you tell him?

8 A. Yes, sir.

9 Q. Did you meet up with him after that?

10 A. Yes, sir. I asked him where he was, and he said he was  
11 back at the park. And I said, well, come on over and sit  
12 down, and he said, no, no, I don't think so. I said, well, do  
13 you want me to come over there, and he said yeah. So I walked  
14 over to his truck.

15 Q. Okay. And at this point did you have some questions in  
16 your mind about the relationship between him and your  
17 daughter?

18 A. Not at that point. I just thought, well, there must have  
19 been something more to what was going on than what my daughter  
20 had told me or he wouldn't have come back.

21 Q. Okay. Then, eventually, at some point did you become  
22 suspicious about the relationship between him and your  
23 daughter?

24 A. Yes, I did.

25 Q. And did you confront him about it?

1 A. Yes, I did.

2 Q. And what did you say to him?

3 A. I said, "Have you been having a relationship with my  
4 daughter?" And he --

5 Q. Is that exactly how you said it?

6 A. Yes. The first time.

7 Q. Okay.

8 A. I said, "Have you been having a relationship with my  
9 daughter?" And he kind of hung his head down and first shook  
10 his head no. Then, more firmly, I looked at him and I said,  
11 "Have you been having sex with my child?"

12 Q. And what was his response to that?

13 A. He very slightly nodded his head yes.

14 Q. Did he actually say anything?

15 A. He had -- he had been saying -- all along, he said, "You  
16 won't understand. You won't understand." And he continued to  
17 say, "You wouldn't understand. You wouldn't understand."

18 Q. But to the question of "Have you been having sex with my  
19 daughter," his only response was a nod?

20 A. At that point, yes.

21 Q. And did you ask him about -- did you raise any other  
22 concerns you had about Kendra being in a sexual relationship?

23 A. Yes, I did.

24 Q. And what did you tell him in regards to that?

25 A. I told him that I had always been concerned about the

1 first time that she would have sex because she was so small  
2 and I didn't want her to be hurt, and he said --

3 Q. What was his response?

4 A. He said, "I didn't hurt her."

5 Q. Okay. At that point did -- soon thereafter, did everyone  
6 part and go their separate ways?

7 A. Yeah. I said a few more things to him, but then we left.

8 Q. Did you actually say to him that you were going to the  
9 police?

10 A. I'm not sure if I actually said that, but I know I said  
11 that he evidently was willing to suffer the consequences of  
12 his actions or he wouldn't have told me what had happened.

13 Q. Okay. And did you guys go to the police that very day?

14 A. No, sir.

15 Q. Why didn't you go to the police right away?

16 A. By then, it was very late in the evening and Kendra asked  
17 me not to. She said, please, mom, please just wait until  
18 after my birthday; let me have my birthday.

19 Q. So that following Monday, the next day, Monday, was her  
20 17th birthday?

21 A. Yes.

22 Q. Once her birthday was over, what did you guys do then?

23 A. The very next day, on Tuesday, we went to the police  
24 department.

25 Q. And did you report everything you knew at the time?

1 A. Yes, I did.

2 Q. And after you went to the police, did anything unexpected  
3 come in the mail?

4 A. Yes. I think it was -- let's see. On Thursday, the  
5 following Thursday, I received I think it was two legal-size  
6 white envelopes and then two very large of the vanilla  
7 envelopes.

8 Q. Were you expecting these things to come in the mail?

9 A. No, sir.

10 Q. And who were they from?

11 A. Officer Darcy.

12 Q. And who were they addressed to?

13 A. To me, and one of them also to Kendra.

14 Q. Okay. Ms. Smith, do you see an envelope in front of you?

15 A. Yes, sir.

16 Q. Do you recognize it?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's the envelope that I received in the mail.

20 MR. THORNELOE: All right. Your Honor, I've  
21 previously marked this as Government's Exhibit 18 for  
22 identification. I'd ask that at this time it be moved into  
23 evidence and published to the jury.

24 THE COURT: Let it be admitted and published.

25 (Government's Exhibit 18 received in

1                   **evidence and displayed to the jury.)**

2 **BY MR. THORNELOE:**

3 **Q.** And, Ms. Smith, now, in front of you I have another  
4 envelope similarly marked. This time it's Government's  
5 Exhibit 19. Is this familiar to you?

6 **A.** Yes, sir.

7 **Q.** And what is it?

8 **A.** It's the other envelope that I received in the mail the  
9 same day.

10                   **MR. THORNELOE:** Your Honor, at this time I'd ask  
11 that Government's Exhibit 19 be moved into evidence and  
12 published to the jury.

13                   **THE COURT:** Let it be admitted and published.

14                   **(Government's Exhibit 19 received in**  
15                   **evidence and displayed to the jury.)**

16 **BY MR. THORNELOE:**

17 **Q.** And, Ms. Smith, did you open these envelopes that you  
18 received?

19 **A.** Yes, sir, I did.

20 **Q.** And just without naming specific items necessarily at  
21 this time, what generally was in these envelopes?

22 **A.** It was just a collage of different things; the permission  
23 slips, notes that Kendra had written, receipts from different  
24 places.

25 She had signed an abstinence card, a purity card, that a

1 lot of the kids were signing pledging abstinence until  
2 marriage, and that was in there.

3 Q. Did you already recognize a few of the things that were  
4 in there?

5 A. Yes. There were also a couple of disks, CDs or DVDs or  
6 something.

7 Q. Computer disks?

8 A. Yes.

9 Q. Ms. Smith, we're going to go through most of what was in  
10 there, and I want you to verify for me that the things that  
11 are in evidence for us came in that envelope, whether or not  
12 that's true, okay?

13 A. Okay.

14 Q. We'll just go through things one at a time and I'll ask  
15 you specifically on each item, okay?

16 A. Okay.

17 Q. Ms. Smith, you see in front of you Government's  
18 Exhibit 12 that's already been entered into evidence and we  
19 talked about earlier. But was this item in the envelopes you  
20 received?

21 A. Yes, sir.

22 Q. And, Ms. Smith, this is Government's Exhibit 6. This is  
23 the permission slip we talked about before. Was this in the  
24 manila envelopes you received?

25 A. Yes, sir.

1 Q. And, Ms. Smith, I'm going to show you now a couple  
2 letters -- a letter that is marked as Government's Exhibit 11.  
3 And I can zoom in on this for you, too.

4 Are you able to see it right now?

5 A. Yes, sir.

6 Q. Do you recognize it?

7 A. Yes, sir.

8 Q. Was it in the envelopes you received?

9 A. Yes, sir.

10 Q. Are there two pages?

11 A. Yes, sir.

12 Q. Now, Ms. Smith, I'd like to show you -- like to show you  
13 what's been marked as Government's Exhibit 8 for  
14 identification. I'm sorry. It's already been entered into  
15 evidence. But, do you recognize this?

16 A. Yes, sir.

17 Q. And what is it?

18 A. That is Kendra's work permit.

19 Q. Okay. And was this in the envelope?

20 A. Yes, sir.

21 Q. Okay. And, Ms. Smith, do you recognize this CD?

22 A. Yes, sir.

23 Q. And was it in the envelope?

24 A. Yes, sir.

25 Q. Ms. Smith, this is marked as Government's Exhibit 10. Do

1 you recognize it?

2 A. Yes, sir.

3 Q. Was it in the envelope?

4 A. Yes, sir.

5 Q. Ms. Smith, this is marked as Government's Exhibit 13. Do  
6 you recognize it?

7 A. Yes, sir.

8 Q. Was it in the envelope?

9 A. Yes, sir.

10 Q. And, Ms. Smith, I have a card in front of me that we  
11 looked at briefly previously, and do you recognize this card?

12 A. Yes, sir.

13 Q. The envelope on the outside.

14 Do you recognize the card itself?

15 A. Yes, sir, I do.

16 Q. Was this card in the envelope?

17 A. Yes, sir.

18 MR. THORNELOE: Your Honor, at this time I'd ask to  
19 enter Government's Exhibit 14 into evidence and publish it to  
20 the jury.

21 THE COURT: Let it be admitted and published.

22 (Government's Exhibit 14 received in  
23 evidence and displayed to the jury.)

24 MR. THORNELOE: And, Your Honor, I'm just going to  
25 give the jury a couple moments to read each page.



1           **THE COURT:** All right.

2           **(Pause.)**

3 **BY MR. THORNELOE:**

4 **Q.** And, Ms. Smith, I placed in front of you a piece of  
5 paper. Do you recognize this paper?

6 **A.** Yes, sir.

7 **Q.** And what does it appear to be to you?

8 **A.** It appears to be a page from a notepad from the Best  
9 Western hotel.

10 **Q.** Okay. And was it in the envelope you received?

11 **A.** Yes, sir.

12           **MR. THORNELOE:** Your Honor, at this time I would ask  
13 that Government's Exhibit 9 be admitted into evidence and  
14 published to the jury.

15           **THE COURT:** Let it be admitted and published.

16           **(Government's Exhibit 9 received in**  
17 **evidence and displayed to the jury.)**

18 **BY MR. THORNELOE:**

19 **Q.** Ms. Smith, I now have in front of you what's marked as  
20 Government's Exhibit 20 for identification.

21 Do you recognize this piece of paper?

22 **A.** Yes, sir.

23 **Q.** And what does it appear to be?

24 **A.** A receipt from Holiday Inn.

25 **Q.** Did it come in the envelope that you received in the

1 mail?

2 **A.** Yes, it did.

3 **MR. THORNELOE:** Your Honor, at this time I'd ask  
4 that Government's Exhibit 20 be admitted into evidence and  
5 published to the jury.

6 **THE COURT:** Let it be admitted and published.

7 **(Government's Exhibit 20 received in**  
8 **evidence and displayed to the jury.)**

9 **BY MR. THORNELOE:**

10 **Q.** Ms. Smith, if you would, if you could just look at this  
11 piece of paper and tell me what does the date September 29th,  
12 2006 -- does that coincide with any other event that you were  
13 otherwise aware of?

14 **A.** I can't think of one.

15 **Q.** Ms. Smith, can you read for me on this piece of paper  
16 starting with where it says "thank you."

17 **A.** Yes, sir.

18 "Thank you for staying at Holiday Inn Express at the Mart  
19 Hickory."

20 **Q.** And in September 2006 was there a field trip that you  
21 believed Kendra to be going on?

22 **A.** Yes, sir.

23 **Q.** And what was that?

24 **A.** To the detention center and the --

25 **Q.** Was that in Hickory?

1 A. Yes, sir, in Hickory.

2 Q. All right. And, Ms. Smith, I now have in front of you  
3 what's been marked as Government's Exhibit 21 for  
4 identification. What does this appear to be?

5 A. It's a ticket to get into Carowinds.

6 MR. THORNELOE: Your Honor, I ask that Government's  
7 Exhibit --

8 Did this come in an envelope that you received?

9 THE WITNESS: Yes, sir.

10 MR. THORNELOE: Your Honor, I ask that Government's  
11 Exhibit 21 be admitted into evidence and published to the  
12 jury.

13 THE COURT: Let it be admitted and published.

14 (Government's Exhibit 21 received in  
15 evidence and displayed to the jury.)

16 BY MR. THORNELOE:

17 Q. Ms. Smith, I'm going to zoom in as much as I can. And  
18 can you read on here -- is there any date that you see?

19 A. Yes, sir.

20 Q. And what date is that?

21 A. May 12, 2007.

22 Q. And so what trip were you aware of that Kendra was on at  
23 that time?

24 A. The Carowinds trip and the concert.

25 Q. Okay. And, Ms. Smith, similarly, here's another ticket

1 marked as Government's Exhibit 22 for identification. Was it  
2 in the envelope?

3 **A.** Yes, sir.

4 **MR. THORNELOE:** Your Honor, I'd ask that  
5 Government's Exhibit 22 be admitted into evidence and  
6 published to the jury.

7 **THE COURT:** Let it be admitted and published.

8 **(Government's Exhibit 22 received in**  
9 **evidence and displayed to the jury.)**

10 **BY MR. THORNELOE:**

11 **Q.** And, Ms. Smith, the date, what do you see there?

12 **A.** May 12, 2007.

13 **Q.** Thank you.

14 Ms. Smith, I'm going to show you another piece of paper  
15 now. Zoom out here.

16 Do you recognize this piece of paper?

17 **A.** Yes, sir.

18 **Q.** Was it in the envelope you received from the defendant?

19 **A.** Yes, sir.

20 **MR. THORNELOE:** Your Honor, at this time I'd ask  
21 that Government's Exhibit 26 be admitted into evidence and  
22 published to the jury.

23 **THE COURT:** Let it be admitted and published.

24 **(Government's Exhibit 26 received in**  
25 **evidence and displayed to the jury.)**

1 **BY MR. THORNELOE:**

2 **Q.** And, Ms. Smith, what performer do you see written or  
3 printed on here?

4 **A.** Gwen Stefani.

5 **Q.** And what concert are you aware that your daughter went  
6 to?

7 **A.** The Gwen Stefani concert.

8 **Q.** Ms. Smith, I'm putting up another similar piece of paper.  
9 Do you recognize Government's Exhibit 25 marked for  
10 identification?

11 **A.** Yes, sir.

12 **Q.** And was it in the envelope received from the defendant?

13 **A.** Yes, sir.

14 **MR. THORNELOE:** Your Honor, at this time I'd ask  
15 Government's Exhibit 25 be moved into evidence and published  
16 to the jury.

17 **THE COURT:** Let it be admitted and published.

18 **(Government's Exhibit 25 received in**  
19 **evidence and displayed to the jury.)**

20 **BY MR. THORNELOE:**

21 **Q.** And, Ms. Smith, what did you do with all these envelopes,  
22 once you received them?

23 **A.** I immediately took them to the police department -- after  
24 I looked through them, I took them to the police department.

25 **Q.** Did you change or alter anything, any of the items?

1 A. No, sir, I did not.

2 Q. Ms. Smith, if you could, tell me what do you know -- do  
3 you know what Mike Darcy's birthday is?

4 A. No, I don't.

5 Q. And your daughter's birthday, again, was?

6 A. September 15th, 1991.

7 MR. THORNELOE: Thank you. No further questions for  
8 now.

9 MS. PARROTT: Just a few questions.

10 THE COURT: All right, Ms. Parrott.

11 CROSS-EXAMINATION

12 BY MS. PARROTT:

13 Q. Ms. Smith, were you married to Kendra's father?

14 A. No, I wasn't.

15 Q. And about how old was Ms. Kendra when the two of you  
16 split ways?

17 A. We were never -- we never had a relationship after she  
18 was born.

19 Q. And your current husband, when did you marry him?

20 A. June 27th, 1997.

21 Q. And I believe you said earlier that Kendra had little  
22 involvement with her biological father, correct?

23 A. He came and saw her on weekends, usually, is all.

24 Q. And would it be fair to say that she had a somewhat  
25 difficult relationship with her stepfather?

1 A. Yes.

2 Q. And Kendra is your oldest child?

3 A. Yes.

4 Q. And she's your only girl?

5 A. Yes.

6 Q. And you're close to her, correct?

7 A. Yes, very.

8 Q. And just like the day at the park when she was pale, you  
9 can tell when she's happy or sad or if she's been hurt, and  
10 she talks to you about things, right?

11 A. She's not real open about her feelings, but, yes, you  
12 know, as much as any daughter does, I guess.

13 Q. And I believe you testified earlier that in the letters  
14 you had received sometime in September, I believe it was in  
15 2008, there was an abstinence card that Kendra had signed. Is  
16 that correct?

17 A. Yes.

18 Q. What is your understanding of what those cards are?

19 A. She pledged to not have sex until she was married.

20 MS. PARROTT: No further questions.

21 MR. THORNELOE: Nothing further, Your Honor.

22 THE COURT: All right. That will complete your  
23 testimony, and you may be excused, Ms. Smith.

24 THE WITNESS: Thank you, sir.

25 THE COURT: All right. Call your next witness.

1           **MR. THORNELOE:** Your Honor, the government calls  
2 Ms. Pat Winters.

3                           **PAT WINTERS,**  
4 **being duly sworn, was examined and testified as follows:**

5                           **DIRECT EXAMINATION**

6 **BY MR. THORNELOE:**

7 **Q.** Good afternoon, Ms. Winters.

8       Could you just please state your full name for the  
9 record.

10 **A.** Patricia Winters.

11 **Q.** And where do you live, ma'am?

12 **A.** In Elk Park, North Carolina.

13 **Q.** And what county is that in?

14 **A.** Avery.

15 **Q.** All right. And how long have you lived there?

16 **A.** All my life. 50 years.

17 **Q.** Okay. And what do you do for a living?

18 **A.** I'm a school bus driver for Avery County.

19 **Q.** Do you have a daughter?

20 **A.** I do.

21 **Q.** You don't need to say her name, but do you have a  
22 daughter in the public schools there?

23 **A.** She just graduated.

24 **Q.** Where did she attend high school?

25 **A.** Avery County.



1 Q. And she graduated from Avery County High School?

2 A. Yes, sir.

3 Q. Was she ever involved in the Police Explorers program at  
4 Avery County High School?

5 A. Yes, she was.

6 Q. And what year did she join that program?

7 A. I'm thinking late 2006.

8 Q. Okay. And who was the leader of the Police Explorers  
9 program when your daughter was involved initially?

10 A. John Millen was the original officer.

11 Q. And did there come a time when Michael Darcy became the  
12 leader of the Police Explorers?

13 A. Yes, he did.

14 Q. And was your daughter a member of the Police Explorers  
15 then?

16 A. Yes, she was.

17 Q. So was your daughter involved in that organization in the  
18 spring of 2007?

19 A. Yes, sir.

20 Q. And did you become aware of a field trip that the  
21 explorers were going on to Carowinds?

22 A. Yes, sir, I was.

23 Q. And what did you know about the trip?

24 A. That it was supposed to be a field trip, per se,  
25 overnight to Carowinds for the Police Explorers group.

1 Q. Did you get a permission slip?

2 A. I did.

3 Q. All right. Did you sign it?

4 A. I did.

5 Q. And were you invited to go on the trip?

6 A. Actually, the way it was worded on the permission slip,  
7 each explorer could take a guest.

8 Q. So did you decide to go on the trip?

9 A. I did. I went as my daughter's guest.

10 Q. And why did you decide -- why did you feel you wanted to  
11 go on the trip?

12 A. Well, I, number one, don't let my daughter go to  
13 overnight anything without chaperones, so...

14 Q. How old was she at the time?

15 A. Barely 16.

16 Q. And do you happen to remember the date of the trip?

17 A. May 12th.

18 Q. And why does that stick out in your mind?

19 A. Close to Mother's Day.

20 Q. And so tell me, if you would, if you could just describe  
21 the scene for me when you arrived at the place where they were  
22 meeting up for the trip. Where was that?

23 A. At the high school parking lot.

24 Q. Okay. And just describe that scene for me when you  
25 arrived.

1 A. Well, we got there early, around 7:00 a.m., and there  
2 were a few of the students there, not all of them, and they  
3 were playing in the parking lot, running around, driving  
4 around in circles; just normal teenage things.

5 Q. Okay. And were there any adults there?

6 A. No.

7 Q. Did, eventually, the defendant show up?

8 A. He did.

9 Q. Okay. And what does he drive?

10 A. It was a Ford Ranger pickup.

11 Q. Do you remember what color?

12 A. Black. Dark color.

13 Q. Okay. Dark color? But you're sure it was a pickup  
14 truck?

15 A. Yes, sir.

16 Q. And when you got there, was there a plan for how  
17 everybody was going to get themselves down to Carowinds?

18 A. I was not aware prior to getting there, but as the  
19 children did come in, some of them were carpooling, some of  
20 them were dropped off.

21 Q. Okay. Did you identify what you thought were any issues  
22 with the plan for loading up the kids?

23 A. I did.

24 Q. What was that?

25 A. Well, some of the children that were dropped off were

1 just automatically going to carpool with the people that were  
2 there, with the children that did have a driver's license, and  
3 I did observe that there was a couple of cars that were  
4 overloaded, with four seatbelts but there was five teenagers  
5 in the car.

6 Q. What vehicle was Kendra in?

7 A. Excuse me?

8 Q. What vehicle was Kendra getting into?

9 A. She got into the Ford pickup.

10 Q. And what did you suggest for fixing what you saw was the  
11 problem?

12 A. Well, one of the girls that was supposed to ride with us  
13 did not show up, and I suggested to Officer Darcy that that  
14 girl, Kendra, ride with me since we had an open seat, and one  
15 of the boys out of the group in the overloaded Camaro could  
16 ride with him.

17 Q. What was his response?

18 A. "I've got it covered. It's okay."

19 Q. So are you saying that you suggested that Kendra be the  
20 one to ride with you?

21 A. Yes, sir.

22 Q. And Officer Darcy didn't want you to do that?

23 A. No, sir.

24 Q. Okay. So what vehicle did you -- when everybody  
25 eventually left, what vehicle did Kendra leave in?

1 A. The Ford pickup.

2 Q. And who was driving?

3 A. Officer Darcy.

4 Q. Was there anybody else in the car?

5 A. No, sir.

6 Q. And when was the next time you saw Kendra and Officer  
7 Darcy?

8 A. At McDonald's in Morganton, North Carolina, where we had  
9 breakfast.

10 Q. Okay. And did they come there by themselves?

11 A. Yes, sir.

12 Q. And who left first? Did you leave first or did Officer  
13 Darcy leave McDonald's first?

14 A. No. A couple of kids that were driving left, and I left,  
15 and I'm assuming he left last.

16 Q. Okay. So you didn't see him leave at that point?

17 A. No.

18 Q. Okay. And when was the next time you saw the defendant  
19 and victim?

20 A. When they checked into the motel.

21 Q. Did you see them drive up there?

22 A. I did.

23 Q. And who was driving?

24 A. Officer Darcy.

25 Q. And who was with him?

1 A. Kendra.

2 Q. Okay. And tell me, where was this motel?

3 A. Fort Mills, South Carolina.

4 Q. What motel was it?

5 A. A Motel 6.

6 Q. Did you keep any sort of receipt at all?

7 A. I did.

8 Q. Ms. Smith, I'm going to show you a small piece of paper  
9 now.

10 Ms. Smith, this piece of paper has been marked as  
11 Government's Exhibit 17 for identification. I'd like you to  
12 look at the front. I'll zoom in for you.

13 Tell me, are you able to see this --

14 A. Yes, sir.

15 Q. -- on your screen?

16 A. Yes, sir.

17 Q. Do you recognize it?

18 A. Yes, I do.

19 Q. And what is it?

20 A. That's my receipt for the motel room.

21 Q. Okay. And did you get it from the motel?

22 A. From the clerk at the front desk.

23 MR. THORNELOE: Your Honor, at this time I'd ask  
24 that Government's Exhibit 17 be admitted into evidence and  
25 published to the jury.

1           **THE COURT:** All right. Let it be published and  
2 admitted.

3                   **(Government's Exhibit 17 received in**  
4                   **evidence and displayed to the jury.)**

5 **BY MR. THORNELOE:**

6 **Q.** And, Ms. Winters, if you would, could you just read --  
7 read off the top of the receipt for me, if you would, down to  
8 the time of day.

9 **A.** Motel 6, 1417. 255 Carowinds Boulevard, Fort Mills,  
10 South Carolina, 29708. 803-548-9656. 12:35 p.m. May 12,  
11 2007.

12 **Q.** Thank you, Ms. Winters.

13           Ms. Winters, when you got there, was there a plan for who  
14 would stay in which rooms?

15 **A.** Only whenever he come to check in did I find out that  
16 there was a layout for who would be where.

17 **Q.** Did you notice anything about where the defendant was in  
18 relation to his victim?

19 **A.** As I said, there was -- when I went down to confront him  
20 about the motel room being paid for, he had a diagram of what  
21 children were in what room, and her name was on the second  
22 floor.

23 **Q.** Okay. Did you notice where he was?

24 **A.** Second floor.

25 **Q.** Was it -- were they neighbors, or how was that?

1 A. It was the only adjoining room out of all the rooms.

2 Q. Okay. And did you see the victim actually go to her  
3 room?

4 A. I did.

5 Q. What did you see?

6 A. Once he checked in and paid the bill -- she remained in  
7 the truck at that point, and once he paid, I guess with his  
8 credit card, he went back to the truck and they proceeded to  
9 get on the elevator and go to the second floor.

10 Q. Did you actually see Kendra's bag?

11 A. Yes.

12 Q. And where did she take that?

13 A. Into the room.

14 Q. And was it clear to you which room was the defendant's  
15 and which room was Kendra's?

16 A. They were -- it was an adjoining room.

17 Q. Okay. And on this trip -- you all said you arrived on  
18 Saturday?

19 A. That's correct.

20 Q. Is that correct?

21 And when was the concert?

22 A. Saturday night.

23 Q. And prior to the concert, did you ever go up to see the  
24 defendant to talk to him?

25 A. I did go to the room earlier because I was not sure of



1 the directions to the concert -- and we had already got lost  
2 on the way down. And I did go to the room to try to find out  
3 directions from Carowinds to the amphitheater where the  
4 concert was.

5 Q. And you were trying to find that out from the defendant?

6 A. Yes, sir.

7 Q. And did you find him?

8 A. Did I find him?

9 Q. Yes.

10 A. Partially.

11 Q. And what happened exactly?

12 A. I knocked on the door, and he came to the door and just  
13 opened the door, and I asked him, I said, can you tell me  
14 exactly, are these directions that's on this piece of paper  
15 correct. Because, like I said, we'd already got lost once.  
16 And he said, yes, they are. And I said, so this is how we get  
17 to the concert? And he said yes.

18 Q. Was there anything suspicious or unusual about the way he  
19 opened the door?

20 A. He just didn't offer to step outside and speak to me, nor  
21 did he invite me inside the door.

22 Q. Okay. How wide would you say he opened the door?

23 A. Six, maybe eight inches, ten inches. Just enough to  
24 speak to me.

25 Q. Were you able to really see inside the room the way he

1 opened the door?

2 A. Nothing but TV blaring.

3 Q. Okay. And did you all go to the concert soon thereafter?

4 A. We did.

5 Q. And did you see all the rest of the kids at the concert?

6 A. Not all of them. Some of the ones that carpooled up did  
7 sit with us.

8 Q. And was the defendant sitting with you all?

9 A. No.

10 Q. Did you see Kendra?

11 A. No.

12 Q. Where were your seats, approximately, in this theater?

13 A. They were up near the concrete walkway before you --  
14 you've got concrete seats, and then you've got the concrete  
15 walkway, and then you had the grass part, and we were sitting  
16 near the concrete walkway.

17 Q. Okay. And after the concert was over, did you all return  
18 to the hotel?

19 A. We did.

20 Q. And what was the -- about what time did you get back to  
21 the hotel, would you say?

22 A. Excuse me?

23 Q. About what time did you get back to the hotel?

24 A. I'm saying 10:00, between 10:00 and 11:00.

25 Q. Okay. And what was the scene like with the kids at the

1 hotel that night?

2 A. Chaotic.

3 Q. Was the defendant supervising them and looking out over  
4 them, from what you could see?

5 A. I never saw him again after I spoke with him at the motel  
6 door at all.

7 Q. How obvious was it that the children weren't behaving  
8 properly?

9 A. Well, there was children in the parking lot, in the  
10 hallways, at Carowinds, in the lobby.

11 Q. Was there any way you could have known where exactly  
12 everybody was?

13 A. Not unless you had everybody's cell phone number.

14 Q. Okay. Were they doing anything they shouldn't have been  
15 doing other than making noise?

16 A. Yes, sir.

17 Q. What did you witness?

18 A. Drinking. And we did have -- I did observe one room a  
19 girl and boy in with the door shut, and there was reek of  
20 marijuana in the hall.

21 Q. What did you feel you needed to do to get the situation  
22 under control? What steps did you take, if any?

23 A. For a while, I just kind of looked around and tried to  
24 see what was going on and who was where, and I did at that  
25 point find out some of the children were still at Carowinds.

1 And so after it got to the point that I couldn't -- the  
2 children that I knew, I couldn't find all of them, I did call  
3 his -- I called the room first, with no answer. So at that  
4 point I called his cell phone.

5 Q. And did you ever get to talk to him on the phone?

6 A. No. No. His voicemail came on. I did leave him a  
7 message, but I never spoke to him, no.

8 Q. And did you ever see him come out and discipline any of  
9 the children?

10 A. No.

11 Q. Did the noise continue for a while?

12 A. Up until about 2:00 a.m., yeah.

13 Q. Okay. And just generally on this trip, how much did you  
14 see Darcy interacting with the other students?

15 A. I didn't see him interacting with them at all.

16 MR. THORNELOE: All right, Ms. Winters, for now,  
17 that's all the questions I have. The defense attorney is  
18 going to ask you a few questions.

19 THE WITNESS: Okay.

20 THE COURT: Ms. Sison?

21 MS. SISON: Your Honor, Ms. Parrott will be asking  
22 the questions.

23 THE COURT: You don't have any questions?

24 MS. SISON: Ms. Parrott.

25 THE COURT: Oh, Ms. Parrott. Yes, go right ahead,

1 Ms. Parrott.

2 **CROSS-EXAMINATION**

3 **BY MS. PARROTT:**

4 **Q.** Ms. Winters, as far as you know, the only adults there  
5 for the Carowinds trip were yourself and Mr. Darcy, correct?

6 **A.** I think there was another mother that was there with a  
7 grandchild.

8 **Q.** Okay. So there could have been another parent there as  
9 well, but not a third parent?

10 **A.** There were no chaperones, to my knowledge.

11 **Q.** And does your daughter know a boy named Tyler?

12 **A.** Excuse me?

13 **Q.** Does your daughter know a boy named Tyler that went on  
14 the trip to Carowinds?

15 **A.** I'm sure she probably does. There was several -- yeah.  
16 She goes to school with all those children. Or did.

17 **Q.** And so you're not aware that Tyler's parents were there  
18 at that time?

19 **A.** As far as I know, Tyler only has a mother. His father, I  
20 don't believe, is in the picture.

21 **Q.** And at the Motel 6, were you staying on the -- what floor  
22 were you staying on?

23 **A.** I was on the third floor.

24 **Q.** And the voicemail message that you left Mr. Darcy when  
25 you saw that children were being chaotic and drinking and out

1 in the parking lot, et cetera, your message told him to do a  
2 room check of all the kids, correct?

3 **A.** A head count is what I --

4 **Q.** A head count?

5 And are you aware that he did such a head count around  
6 midnight?

7 **A.** No, ma'am. I did not see him.

8 **Q.** And when you said you went to Mr. Darcy's motel room door  
9 and he opened it about eight inches wide, he was fully  
10 clothed, wasn't he?

11 **A.** Well, I'm sure I would have noticed if he were not. Yes.

12 **MS. PARROTT:** Thank you. No more questions.

13 **THE COURT:** All right. That will complete your  
14 testimony, and you may be excused.

15 All right. We're going to take our midafternoon  
16 recess 15 minutes.

17 Others remain seated, and, members of the jury,  
18 you're excused for a 15-minute recess.

19 **(The jury left the courtroom.)**

20 **(Recess.)**

21 \* \* \*

22 **(The jury entered the courtroom. The defendant**  
23 **is present.)**

24 **THE COURT:** All right.

25 **MS. FORD:** Thank you, Your Honor. The government

1 calls Randy Eberhardt.

2 **RANDY EBERHARDT,**

3 **being duly sworn, was examined and testified as follows:**

4 **DIRECT EXAMINATION**

5 **BY MS. FORD:**

6 **Q.** Would you please state your full name and spell it for  
7 the court reporter, please?

8 **A.** Randolph Keith Eberhardt. Spelling last name, 'E' as in  
9 Edward; 'b' as in boy; 'e' as in Edward; 'r' as in Robert;  
10 'h', Henry; 'a', apple; 'r', Robert; d-t.

11 **Q.** Mr. Eberhardt, do you work for a corporation called Accor  
12 North America?

13 **A.** That's the (inaudible) company that I work for, yes.

14 (Interrupted by the court reporter.)

15 **A.** Yes, that is correct.

16 **Q.** Let me do it again.

17 **A.** Okay.

18 **Q.** Do you work for a company called Accor North America?

19 **A.** Yes, I do.

20 **Q.** And is Accor spelled A-c-c-o-r?

21 **A.** Yes, ma'am.

22 **Q.** And is Accor North America the parent company of Motel 6?

23 **A.** It is.

24 **Q.** And is it fair to say that you work for Motel 6?

25 **A.** Yes, ma'am.

1 Q. How long have you worked for Motel 6?

2 A. March 2001.

3 Q. And when you began with Motel 6, what was your job?

4 A. General manager.

5 Q. Of a particular Motel 6 location?

6 A. Yes, ma'am. Spartanburg, South Carolina.

7 Q. And did you have another job with Motel 6 after the  
8 Spartanburg location?

9 A. Yes, I have.

10 Q. Have you been the general manager for other Motel 6s?

11 A. Probably 30 to 40, somewhere in that neighborhood, yes,  
12 ma'am.

13 Q. Currently do you work for Motel 6?

14 A. I do.

15 Q. What's your job now?

16 A. General manager.

17 Q. Of which location?

18 A. Asheville, North Carolina.

19 Q. Have you, in your employment with Motel 6, been down to  
20 the Motel 6 on Carowinds Boulevard in Fort Mills, South  
21 Carolina?

22 A. Yes, ma'am, I have.

23 Q. And as an employee of Motel 6 for the past eight years,  
24 are you familiar with how Motel 6 keeps records?

25 A. Yes, ma'am.



1 Q. Are you familiar with the procedure with which they keep  
2 records?

3 A. Yes, ma'am.

4 Q. When a record is made, is the information that makes up  
5 the record inputted at the time of the event?

6 A. At the time of check-in, yes, ma'am.

7 Q. In other words, if a guest checks in to a Motel 6, is  
8 there a record created?

9 A. There is, yes, ma'am.

10 Q. And is the information as to that guest's stay inputted  
11 into the computer at the time of the guest's stay?

12 A. Yes, ma'am.

13 Q. Is it the regular practice of Motel 6 to make and keep  
14 records?

15 A. Yes, it is.

16 Q. And are those records kept in the regular course of Motel  
17 6's business?

18 A. Yes, ma'am.

19 Q. I'm going to show you what I've marked Government's  
20 Exhibit 30. Do you recognize Government's Exhibit 30?

21 A. Yes, I do.

22 Q. What is it?

23 A. That's a registration form.

24 Q. What is a registration form?

25 A. It's the form that's filled out at the time the guest

1 checks in, stating the time that they check in, their address.  
2 It's also signed by the guest. It gives a registration number  
3 and the amount of the stay, the date of the stay, and a  
4 signature of the guest that checked in.

5 Q. Who does this registration card pertain to?

6 A. Mike Darcy.

7 Q. And when was the date of the stay?

8 A. May 12, '07.

9 Q. And was this a record that was kept in the regular course  
10 of Motel 6's business?

11 A. Yes, ma'am, it is.

12 MS. FORD: Your Honor, move to introduce  
13 Government's 30 and publish.

14 THE COURT: All right. Let it be admitted and  
15 published.

16 (Government's Exhibit 30 received in  
17 evidence and displayed to the jury.)

18 BY MS. FORD:

19 Q. At the top left, there is the name Mike Darcy.

20 A. That's correct.

21 Q. Is that the name of the person paying for the hotel room?

22 A. Yes, ma'am.

23 Q. Is there a particular room number on there?

24 A. This particular case, it's room 217.

25 Q. And is there a date of the stay?

1 A. May 12, '07.

2 Q. And when did the guest check out?

3 A. Noon, May 13, '07.

4 Q. Thank you.

5 I'm going to show you what I've marked as Government's  
6 Exhibit 31.

7 Do you recognize Government's 31?

8 A. Yes, ma'am.

9 Q. Is it a registration card?

10 A. It is, yes, ma'am.

11 MS. FORD: Your Honor, I'd move to introduce  
12 Government's 31 and publish.

13 THE WITNESS: I'm sorry. I didn't understand you.

14 MS. FORD: I was actually talking to the judge.

15 THE WITNESS: I'm sorry.

16 MS. FORD: Your Honor, I move to introduce  
17 Government's 31 and to publish it.

18 THE COURT: Let it be admitted and published.

19 (Government's Exhibit 31 received in  
20 evidence and displayed to the jury.)

21 BY MS. FORD:

22 Q. And is this another registration card?

23 A. Yes, ma'am.

24 Q. Does it show the name of the guest?

25 A. Yes, ma'am. Mike Darcy.

1 Q. And is this for a different room?

2 A. 227. Yes, ma'am.

3 Q. And the date of the stay is the same as the previous one?

4 A. Yes, ma'am.

5 MS. FORD: Can I see the next one, please?

6 BY MS. FORD:

7 Q. Now I'm showing you what's marked as Government's 32. Is  
8 that also a Motel 6 registration card?

9 A. Yes, ma'am.

10 MS. FORD: Your Honor, I'd move to introduce and  
11 publish Government's 32.

12 THE COURT: Let it be admitted and published.

13 (Government's Exhibit 32 received in  
14 evidence and displayed to the jury.)

15 BY MS. FORD:

16 Q. And is this basically the same as before but for a  
17 different room?

18 A. Yes, it is.

19 Q. And which room is that?

20 A. 218. 219. Excuse me.

21 Q. Okay. So we've gone through three rooms so far?

22 A. Yes, ma'am.

23 MS. FORD: May I see the next one?

24 BY MS. FORD:

25 Q. Now I'm showing you what I've marked as Government's

1 Exhibit 33. Is it another registration card?

2 A. Yes, ma'am.

3 MS. FORD: Your Honor, I'd move to introduce and  
4 publish Government's 33.

5 THE COURT: All right. Let that be admitted and  
6 published.

7 (Government's Exhibit 33 received in  
8 evidence and displayed to the jury.)

9 BY MS. FORD:

10 Q. Same thing as before but another room?

11 A. Yes, ma'am.

12 Q. So that's the fourth different room; is that correct?

13 A. Yes, ma'am.

14 MS. FORD: May I see the next one?

15 BY MS. FORD:

16 Q. Government's 34. Is that also a registration card?

17 A. Yes, ma'am.

18 MS. FORD: Your Honor, I'd move to introduce and  
19 publish Government's 34.

20 THE COURT: Let it be admitted and published.

21 (Government's Exhibit 34 received in  
22 evidence and displayed to the jury.)

23 BY MS. FORD:

24 Q. Again the guest is Mike Darcy?

25 A. Yes, ma'am.

1 Q. The date is 5-12-07 to 5-13-07?

2 A. Yes, ma'am.

3 Q. And this is for a fifth room; is that correct?

4 A. Yes.

5 Q. 228, I believe that says.

6 A. I believe that's correct, yes, ma'am.

7 Q. And Government's 35, is that also a registration card?

8 A. Yes, ma'am.

9 MS. FORD: Your Honor, I'd move to introduce and  
10 publish Government's 35.

11 THE COURT: Let it be admitted.

12 (Government's Exhibit 35 received in  
13 evidence and displayed to the jury.)

14 BY MS. FORD:

15 Q. Same thing as before. Six different rooms; is that  
16 correct?

17 A. That's correct.

18 Q. 222?

19 A. Yes, ma'am.

20 MS. FORD: May I see the next exhibit, please?

21 BY MS. FORD:

22 Q. And this is Government's Exhibit 36. Is it also a  
23 registration card?

24 A. Yes, ma'am.

25 MS. FORD: Your Honor, I'd move to introduce and

1 publish Government's 36.

2 **THE COURT:** Let it be admitted and published.

3 (Government's Exhibit 36 received in  
4 evidence and displayed to the jury.)

5 **BY MS. FORD:**

6 **Q.** Same guest, same date, another different room; is that  
7 correct?

8 **A.** That's correct, ma'am.

9 **Q.** Room 226. Is that correct?

10 **A.** Yes, ma'am.

11 **Q.** Okay. And Exhibit 37. Do you recognize Exhibit 37?

12 **A.** Yes, ma'am. That appears to be a credit card receipt  
13 showing all of the rooms that we just talked about and a  
14 total, signed by same person that signed all the reg' cards of  
15 the credit slip. And it shows the --

16 **Q.** Hold on one second, Mr. Eberhardt.

17 **A.** I'm sorry.

18 **Q.** Is this a record that Motel 6 keeps in the regular course  
19 of its business?

20 **A.** Yes, ma'am.

21 **MS. FORD:** Your Honor, I'd move to introduce  
22 Government's 37 and publish.

23 **THE COURT:** Let it be admitted and published.

24 (Government's Exhibit 37 received in  
25 evidence and displayed to the jury.)

1 BY MS. FORD:

2 Q. Now, in the middle of the piece of paper, what's that?

3 A. It's a list of the room number and the registration  
4 number of the guest that checked in.

5 Q. Now, the handwriting with 217, 227, what is all of that?

6 A. That's what our clerk fills out so that we know what this  
7 credit card paid for, what rooms that they paid for.

8 Q. Okay. In the very middle of the paper, what is that?

9 A. That's the name and address of the motel.

10 Q. Is that actually a credit card receipt?

11 A. Yes, it is.

12 Q. And what is the name and address of the motel?

13 A. Motel 6, Property #1417, Carowinds Boulevard, Fort Mills,  
14 South Carolina.

15 Q. There is a date, I think, on there that says 5-12-07?

16 A. Yes, ma'am.

17 Q. Is that the date of check-in or checkout?

18 A. That's the date of check-in.

19 Q. And then does the guest sign it at the bottom?

20 A. Yes, ma'am.

21 Q. Did this person appear to pay for seven rooms?

22 A. That's -- yes, ma'am.

23 Q. And you are familiar with this Motel 6?

24 A. Yes, ma'am.

25 Q. Is it in South Carolina?



1 A. It is.

2 MS. FORD: I don't have any further questions, Your  
3 Honor.

4 THE COURT: Ms. Parrott?

5 MS. PARROTT: No questions, Your Honor. Thank you.

6 THE COURT: All right. Further questions?

7 MS. FORD: No, sir.

8 THE COURT: All right. Thank you, sir. That will  
9 complete your testimony.

10 MR. THORNELOE: Your Honor, the government calls  
11 Special Agent James Newton.

12 JAMES NEWTON,  
13 being duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THORNELOE:

16 Q. Good afternoon, Agent Newton.

17 Could you just say your full name for the record?

18 A. James Adam Newton.

19 Q. And who are you employed by?

20 A. The Federal Bureau of Investigation.

21 Q. And how long have you been so employed?

22 A. Approximately four years.

23 Q. And before you were an FBI agent, what did you do for a  
24 living?

25 A. I was a submarine officer in the U.S. Navy.

1 Q. Okay. And are you involved in the case of Michael Darcy?

2 A. I was.

3 Q. And what was your initial involvement that brought you to  
4 the case?

5 A. I was contacted by the Avery County Sheriff's Department  
6 and the Beech Mountain Police Department for a meeting on a  
7 case that they were concerned about.

8 Q. Okay. And was that about the defendant, Mr. Darcy?

9 A. Yes.

10 Q. Okay. And based on what you learned there, did you  
11 conduct an investigation into Michael Darcy?

12 A. I did.

13 Q. All right. And in the course of your investigation, did  
14 that lead to an indictment against Mr. Darcy?

15 A. Yes.

16 Q. And what was the date of that indictment?

17 A. It was February 24th of this year.

18 I'm sorry. February 17th of this year.

19 Q. All right. And then following the indictment -- are you  
20 the agent that arrested him?

21 A. I am.

22 Q. And what day did that occur?

23 A. That occurred on February 24th of this year.

24 Q. Where did that occur?

25 A. At the federal building here in Asheville.

1 Q. Right next to this building?

2 A. Right next to this building.

3 Q. Okay. And when you arrested the defendant, did you  
4 conduct an interview with him?

5 A. I did.

6 Q. And did he consent to that interview?

7 A. He did.

8 Q. Agent Newton, I'm going to show you now a piece of paper,  
9 and let me see if you recognize this.

10 All right. We'll get to this in just one second.

11 The day you arrested Mr. Darcy -- and where exactly did  
12 you conduct the interview?

13 A. We conducted our interview in the FBI office, which is  
14 contained in that federal building.

15 Q. Okay. And prior to conducting the interview, before you  
16 asked him any questions about the case, did you read him his  
17 rights?

18 A. We did.

19 Q. In front of you there's a document. Do you recognize it?

20 A. I do.

21 Q. And what is it?

22 A. It is an FD-395, which is the standard FBI Advice of  
23 Rights Form.

24 Q. And did you present this document to the defendant?

25 A. I did.

1 Q. Did you see him sign it?

2 A. I did.

3 MR. THORNELOE: Your Honor, at this time I'd ask  
4 that Government's Exhibit 27 for identification be moved into  
5 evidence and published to the jury.

6 THE COURT: All right. Let that be admitted and  
7 published.

8 (Government's Exhibit 27 received in  
9 evidence and displayed to the jury.)

10 BY MR. THORNELOE:

11 Q. All right. Agent Newton, while we have the document up  
12 in front of the camera, I'm just going to have a seat.

13 Are you able to read everything on here?

14 A. I am.

15 MR. THORNELOE: Just one second, Your Honor.

16 BY MR. THORNELOE:

17 Q. Agent Newton, I'm just going to zoom in on the top half a  
18 little bit first.

19 Agent Newton, prior to this interview, you presented this  
20 form to the defendant; is that correct?

21 A. That's correct.

22 Q. Could you just explain to the jury how it is that you and  
23 the FBI administer a rights warning to a defendant -- or to  
24 someone you're going to question before you question them.

25 A. Well, in this case we presented this form to him and we

1 told him before we asked him any questions we have to go over  
2 your rights.

3 We put the form in front of him and we asked him to read  
4 the form line by line. After each line -- so in the first  
5 case, we asked him to read the first line aloud so that we  
6 know that he has read it. We would say, before we ask you any  
7 questions, you must understand your rights.

8 At that point, I asked him, "Do you understand that  
9 line?" He said, "Yes." And we asked him to initial next to  
10 each line before going on to the next line.

11 And we did that all way through, and at the end, after  
12 reading aloud each line, we asked him to sign it, and then  
13 myself and the other agent witnessed the form.

14 Q. Okay. I'm just going to adjust the form so they can see  
15 that part.

16 Agent Newton, on this form, under where it says "Signed,"  
17 whose signature is that?

18 A. That is a signature of Mr. Darcy.

19 Q. And did you witness him sign that?

20 A. I did.

21 Q. And then, thereafter, did you and another FBI agent sign  
22 as witnesses?

23 A. I did. The top -- the top signature is mine.

24 Q. Who is the other FBI Agent?

25 A. Special Agent Andy Romagnuolo.

1 Q. Thank you.

2 So who all was present for this interview?

3 A. Myself, Special Agent Romagnuolo, and Mr. Darcy.

4 Q. And where did you -- where exactly in the FBI office did  
5 you interview him?

6 A. We did it in the conference room where we hold our  
7 meetings. Big conference table, you know, about eight to ten  
8 chairs around the table.

9 Q. So this wasn't an interrogation room?

10 A. No.

11 Q. And was Mr. Darcy restrained at all during it?

12 A. No.

13 Q. Okay. What was his mental condition when you spoke to  
14 him that you were able to observe?

15 A. Normal. Lucid. I noted nothing out of the ordinary in  
16 his mental condition.

17 Q. Did he seem to understand what was going on?

18 A. Oh, yes.

19 Q. What else did you do, if anything, to make him  
20 comfortable before you began?

21 A. We offered to see if he had to go to the bathroom. We  
22 got him a can of soda. Made sure he was comfortable.

23 Q. Did he take you up on the offer of the drink?

24 A. Yes.

25 Q. Okay. So when you began this confession -- well,

1 prior -- during your investigation, did you determine the age  
2 of Mr. Darcy?

3 A. Yes, I did.

4 Q. And what was that?

5 A. His date of birth is October 10th, 1963, which at the  
6 time is 46 -- 45 years old at the time.

7 Q. Okay. And then did you begin -- once you administered  
8 the form and made him comfortable, did you begin your  
9 interview?

10 A. We did.

11 Q. What did he tell you about his background as a police  
12 officer?

13 A. He said he had been employed with the Beech Mountain  
14 Police Department and also worked as school resource officer  
15 for Avery County Sheriff's Office.

16 Q. Did he mention the Explorers?

17 A. Or Avery County School District.

18 Excuse me?

19 Q. Did he mention the Explorers?

20 A. Yes. He said part of his responsibilities of being the  
21 school resource officer at the Avery County High School was to  
22 be in charge of the Explorer program.

23 Q. And what did you understand the Explorers program to be?

24 A. I understood it to be a program that introduced students  
25 to a career as a police officer.

1 Q. Did he tell you anything about a student named Kendra  
2 being a member of the Police Explorers?

3 A. He did.

4 Q. What did he tell you -- we'll get to more about her, but,  
5 just with regard to her membership in the Explorers?

6 A. He said that she was a member.

7 Q. Did he tell you anything about beginning a relationship  
8 with Kendra beyond a normal student/mentor relationship?

9 A. Yes. He said that they -- her freshman year, they became  
10 more friendly, talked on the phone, that kind of thing. He  
11 said he had given his phone number to several students, and he  
12 talked to her a good bit.

13 Q. Okay. Did he say to you that his relationship with her  
14 became sexual?

15 A. He did.

16 Q. What did he say was initially the nature of their sexual  
17 relationship?

18 A. He said they had sexual intercourse, I believe he said  
19 the first time in January of 2007, I believe, but had had oral  
20 sex prior to that.

21 Q. Okay. And did he say anything about working with her at  
22 the ski resort?

23 A. Yeah. He said he was able to get her a job at the ski  
24 resort and work with her.

25 Q. All right. Did he mention that he had given her driving



1 lessons?

2 A. Yes.

3 Q. Okay. What did he tell you about going to hotel rooms  
4 with Kendra in Banner Elk?

5 A. He said on at least one occasion he took Kendra to a  
6 hotel room in Banner Elk and they had sexual intercourse.

7 Q. And did he say anything to you about the Carowinds trip?

8 A. Yes.

9 Q. What did he tell you about the trip to Carowinds and his  
10 plan to go down there with Kendra?

11 A. He said he had arranged that -- she liked going to  
12 concerts; that he had arranged a trip with the Police  
13 Explorers where about 20 students would go down there, they  
14 would go to Carowinds, go to a concert, and go to Carowinds  
15 the following day.

16 Q. And where did he say he stayed?

17 A. He said he stayed at a motel.

18 Q. Did he say anything to you guys about the fact that the  
19 rooms -- anything in particular about the room connected to  
20 his room, or his room and Kendra's room, and about the doors?

21 A. He said he had adjoining rooms with Kendra.

22 Q. Okay. Did he say whether or not he actually had sex with  
23 Kendra at the hotel?

24 A. He said he had sex with Kendra at the hotel that night.

25 Q. Okay. Did he talk to you about later on, in September of

1 2008, about his breakup with Kendra?

2 A. Yes.

3 Q. Did he say whether or not Kendra's mother had asked --  
4 had accused him of anything, of any sexual relationship?

5 A. He said that she asked if they had had sex.

6 Q. And what did he say was his response to that?

7 A. He said specifically he did not answer that question.

8 Q. Okay. Now, with regards to all the evidence that came in  
9 envelopes, did he make any admissions about mailing envelopes  
10 to Jane Smith?

11 A. Not directly.

12 Q. Okay. Well, what, if anything, did he say?

13 A. During the course of the interview I had the envelopes on  
14 the table. I didn't -- they were in plain view, just the --  
15 not the contents but the envelopes themselves, and at one  
16 point he acknowledged them knowingly and, you know, saying  
17 "that stuff," basically, you know, in the course of  
18 discussion.

19 Q. Okay. So did he deny that he'd sent those envelopes to  
20 Jane Smith?

21 A. No. No.

22 Q. Okay. Was there anything about -- during the course of  
23 your investigation, did you learn anything about what you --  
24 with respect to electronic evidence, such as e-mails or texts  
25 or anything like that, that might exist in this case?

1 A. Yeah. We believed, through the course of the  
2 investigation, that they spoke or they communicated via  
3 e-mail, instant messenger at times.

4 Q. Did he say anything about what he might have done with  
5 any of that evidence?

6 A. He did.

7 Q. What did he say?

8 A. He said -- we had asked him about his computer; we asked  
9 him where his computer was, and he made a statement that he  
10 had switched out the hard drive out of that computer and  
11 installed a new hard drive in the computer so there was no  
12 longer any evidence on there.

13 Q. Okay. Did he say why he did that?

14 A. He said -- he made a statement to the effect of, well,  
15 I'm a police officer and I'm not stupid.

16 MR. THORNELOE: Thank you, Special Agent Newton. I  
17 have no further questions for now.

18 MS. SISON: Thank you, Your Honor.

19 THE COURT: Ms. Sison?

20 CROSS-EXAMINATION

21 BY MS. SISON:

22 Q. Agent Newton, I take it that you and the other agent were  
23 looking for Mr. Darcy to arrest him. Is that right?

24 A. That is correct.

25 Q. And that was on February 24th of this year?

1 A. Yes.

2 Q. And when it turned out that you were able to locate him  
3 by phone, instead of going out to arrest him where he was, you  
4 just asked him to come over to the FBI office here in downtown  
5 Asheville?

6 A. Yes. We asked him to turn himself in, yeah.

7 Q. And he agreed to that?

8 A. He did.

9 Q. And it was your understanding that he was coming back  
10 from Winston-Salem for a doctor's appointment?

11 A. Yes.

12 Q. And he told you that?

13 A. Yes.

14 Q. And you didn't have any reason to disbelieve him?

15 A. We had corroborative -- we had spoken to other people who  
16 corroborated that story, so, yes.

17 Q. Okay. At that point he was with his brother Brian?

18 A. Yes.

19 Q. And Brian was driving the car that they were in to go to  
20 the doctors?

21 A. Yes.

22 Q. And Brian had also driven the car to take him back to  
23 Asheville?

24 A. Andrews is where they were heading to. Yeah.

25 Q. Okay. But they were going to stop over in Asheville so

1 that he could leave Mr. Darcy with you?

2 A. Yes.

3 Q. You knew that he had been seeing a doctor for an accident  
4 in the fall of 2008, right?

5 A. We found that out that day, yes.

6 Q. He came on crutches?

7 A. Yes.

8 Q. And you didn't take the crutches away from him when he  
9 came to your office?

10 A. No.

11 Q. So in order for him to come to your office, I take it  
12 there's a metal detector that allows people to come into the  
13 federal building?

14 A. Yes.

15 Q. And he came in around 5:00 or 6:00, I take it?

16 A. Yes.

17 Q. And was that metal detector still operating?

18 A. It was.

19 Q. And so I take it he had to go through that detector?

20 A. We brought him through the -- we tried to bring him  
21 through the detector but realized he couldn't move with the  
22 crutches, so the guard there was able to use a hand wand, and  
23 we cleared him basically with one of the hand wand metal  
24 detectors.

25 Q. And there was no concern about him having any kind of

1 weapons or anything like that, right?

2 A. There's always concern when you arrest somebody.

3 Q. I guess I mean after the wandling.

4 A. We frisked him, we went through his pockets, and we were  
5 satisfied at that point that he didn't have any weapons on  
6 him.

7 Q. And he was still, I think, with his brother and/or  
8 sister-in-law at that time?

9 A. Yes.

10 Q. And you had asked them to leave?

11 A. No.

12 Q. Or somebody did.

13 A. No.

14 Q. Didn't you testify that the other agent was talking to  
15 them and he told them that they could leave now?

16 A. Yeah, but we didn't ask them to leave.

17 Q. Okay. So they could have stayed if they wanted to?

18 A. They didn't ask to.

19 Q. Could they have stayed if they wanted to? Could they  
20 have sat and waited?

21 A. If they requested it, we would have taken that into  
22 consideration. I don't know.

23 They dropped him off, asked him where he would be that  
24 night, asked him -- asked, you know, what the procedure was.

25 We explained to the best of our ability what was going to

1 happen to him over the next few days, and they left.

2 Q. So I take it from your answer they did not ask to remain  
3 with him?

4 A. No.

5 Q. And you didn't offer to allow them to remain with him?

6 A. No.

7 Q. And I take it that you told them that you had wanted to  
8 arrest him by taking him to Buncombe County jail?

9 A. We told them that that is where he would spend the night,  
10 yes.

11 Q. Okay. Did you tell them that you wanted to interview  
12 him?

13 A. I don't remember specifically. I was -- like I said, the  
14 other special agent was speaking mostly to the brother and  
15 sister-in-law. I was with the guard, frisking and wandling  
16 Mr. Darcy, so what exactly Agent Romagnuolo said, I don't  
17 know.

18 Q. So you don't know if the agent told him they had to leave  
19 right then and there?

20 A. I don't know specifically, but I don't believe so.

21 Q. So when you have somebody in -- I shouldn't say custody.  
22 But when you have a suspect, I take it that you want to  
23 interview him, get a statement from him. Would that be fair  
24 to say?

25 A. We generally interview people after we arrest them.

1 Q. And I take it that you don't want other people present,  
2 like a relative? Like a brother?

3 A. Generally, I guess we don't. It's always better to  
4 interview one person at a time.

5 Q. And actually, the only person that you would probably  
6 allow to be in there would be his counsel, if he asked for  
7 one; is that right?

8 A. General -- I don't understand the question.

9 Q. The only person that you would have to allow to be in the  
10 interview room with him is his counsel.

11 A. I believe that's correct.

12 Q. Okay. And so in order to get to the FBI office, I take  
13 it that it's not an office somebody can just go in; that they  
14 have to be allowed to come in. Is that right?

15 A. That's correct.

16 Q. There was nobody else besides you two agents and  
17 Mr. Darcy at that point?

18 A. That's correct.

19 Q. And this interview lasted about two hours?

20 A. Approximately.

21 Q. Prior to talking to him, you had been aware he was coming  
22 back from the doctors, right?

23 A. Yes.

24 Q. Did you ask him if he had been on any kind of medication?

25 A. No, not specifically.



1 Q. And did you discover later that he was, in fact, on  
2 medication?

3 A. I never discovered that, no.

4 Q. You didn't find that out at another hearing?

5 A. I did not. I was outside during the entire hearing.

6 Q. And you never asked him if he was on medication?

7 A. We never specifically asked him if he was on medication.

8 Q. And so when you say "we," the other agent didn't ask him  
9 as well?

10 A. Right.

11 Q. And so you, by the time you talked to him on -- I believe  
12 you said 2-24-09.

13 This interview took place after Kendra had spoken to the  
14 detective; is that right?

15 A. Excuse me?

16 Q. Your interview of Mr. Darcy took place after Kendra had  
17 already talked to the detectives.

18 A. Yes.

19 Q. Okay. And I believe she had talked to them, she said  
20 after her birthday in September 2008?

21 A. Right.

22 Q. And so I take it during that time, you had information  
23 about what she had said?

24 A. Yes.

25 Q. And I take it that you had been briefed by whoever she

1 spoke to?

2 A. Yes.

3 Q. And maybe you got police reports?

4 A. Yes.

5 Q. And I take it, Agent -- you strike me as somebody who is  
6 a pretty good FBI agent and you would have read all those  
7 reports.

8 A. Yes.

9 Q. And I take it that's to make you a better interviewer?

10 A. It's to be aware of the case, yes.

11 Q. Okay. And I take it that -- you had indicated that the  
12 indictment was filed about a week before this interview.

13 A. Yes.

14 Q. And I take it you were the person who testified at grand  
15 jury about this case?

16 A. Yes.

17 Q. During this interview, sir, did you tape this interview  
18 of Mr. Darcy?

19 A. No.

20 Q. Audiotape?

21 A. No.

22 Q. Did you videotape it?

23 A. No.

24 Q. Did he write a statement, either type it out himself or  
25 write it in his own handwriting?

1 A. No.

2 Q. Did you type out a statement for him to sign as his own  
3 statement?

4 A. No.

5 Q. And you indicated, sir, that you had asked him about some  
6 computer that he had?

7 A. Yes.

8 Q. And the hard drive was removed?

9 A. Yes.

10 Q. And so there was no evidence that you could get from his  
11 computer.

12 A. As far as we believe, yes.

13 Q. And I take it that what you had been looking for were  
14 probably e-mails or any kind of data regarding this so-called  
15 relationship between the two of them.

16 A. Yes.

17 Q. And you knew what his e-mail address was, or at least  
18 could get access to it?

19 A. We believed we knew at least what one or two of his  
20 e-mail addresses were.

21 Q. And I take it by knowing that e-mail address, you could  
22 have gotten those e-mails from the provider, like Yahoo or  
23 Gmail or whatever it was?

24 A. Sometimes you can.

25 Q. Okay. Sometimes you can. Did you try to in this case?

1 A. No.

2 Q. And in this case do you have any kind of DNA evidence?

3 A. No.

4 Q. And in this case do you have any kind of medical reports?

5 A. No.

6 MS. SISON: Thank you, sir. I have no more  
7 questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. THORNELOE:

10 Q. Agent Newton, when the defendant arrived at the FBI  
11 office there, did he tell you he was in pain at that moment?

12 A. No. No.

13 Q. Did he seem like he was under the influence of drugs or  
14 alcohol?

15 A. No, not at all. And we asked him if he was all right to  
16 continue.

17 Q. Okay. So you said that the interview lasted about two  
18 hours, right?

19 A. Something along that. I think it was a little less than  
20 that.

21 Q. Now, with regards to that interview, was that interview  
22 completely taken up with time of you asking questions, or did  
23 there come a time when you entertained questions from the  
24 defendant?

25 A. No. Towards the end, I would say the last maybe 30

1 minutes, he began asking us questions about, you know, what's  
2 going to happen to him, where would he spend the night, how  
3 many days would he be in jail, specific questions about the  
4 victim, about Kendra.

5 So I'd say the last good portion of the interview was him  
6 asking us questions.

7 Q. Special Agent Newton, is there any law or FBI rule or  
8 anything like that that requires you to tell family members,  
9 or the brother of a defendant, that you intend to interview  
10 them?

11 A. Not that I'm aware of, no.

12 Q. So you didn't break any protocol?

13 A. No.

14 Q. Or etiquette of the FBI?

15 A. No.

16 Q. Did you find out from the defendant what Kendra's  
17 birthday was?

18 A. Yes.

19 Q. What did he tell you?

20 A. We asked him what her birthday was, and he said it was  
21 September 15th, 1981 [sic].

22 Q. So did you later corroborate that fact to be true?

23 A. Yes.

24 Q. So did he tell you other facts --

25 The other facts that he'd been telling you, did you

1 independently corroborate them to be true, to your  
2 satisfaction?

3 A. Yes.

4 Q. So that would you say the things that he was telling you  
5 were -- that they were grounded in reality?

6 A. Oh, yes.

7 Q. And that he seemed to be -- he didn't seem to be  
8 fabricating a story based on some sort of drug influence?

9 A. No. No. He told us what we had expected. There were no  
10 surprises in what he had said.

11 Q. Okay. And at any time did he tell you he needed to get  
12 some medication or anything like that?

13 A. No. He was concerned about his -- we did actually talk a  
14 good bit about his medical history over the course of time,  
15 because he was on crutches. He also had a cast on his wrist,  
16 which, when he held a pen, you know, you could tell his hand  
17 was a little shaky. And he had indicated that he suffered  
18 from a form of palsy that caused a little bit of tremors and  
19 he was worried about getting that medication for his palsy  
20 because he had recently had surgery -- or a previous surgery  
21 he had ripped some stitches because of the tremors. So he was  
22 a little worried about getting that medication.

23 Q. Okay. He didn't say that any of these conditions were  
24 related to his mental state?

25 A. No.

1           **MR. THORNELOE:** Okay. That's all the questions I  
2 have for now.

3                           **RECROSS-EXAMINATION**

4   **BY MS. SISON:**

5   **Q.** Agent Newton, you just testified that part of the  
6 interview, the latter part, were his questions about Kendra;  
7 is that right?

8   **A.** Yes. One or two. He asked specifically if I had spoken  
9 to Kendra.

10   **Q.** Okay. And you were here when she testified that she had  
11 spoken to him and he wanted to know what she had told the  
12 police. Do you remember that testimony?

13   **A.** I remember her saying that he had sent her e-mails to  
14 that effect, but I don't remember her saying that she had  
15 spoken to him.

16   **Q.** Okay. But there was some communication about that?

17   **A.** But only one way, as far as I remember.

18   **Q.** If someone gives false information to law enforcement,  
19 that's against the law, correct?

20   **A.** The federal -- the only law that lying to a federal  
21 officer is a violation of is Title 18, U.S. Code 1001.

22   **Q.** Are you aware that there is also a similar law in the  
23 state for law enforcement?

24   **A.** I'm not terribly familiar with state laws.

25   **Q.** Okay. And so you just testified during redirect that

1 everything he said tracked what your information was.

2 A. Yes.

3 Q. And your information about what had happened, and  
4 specifically we're talking about Carowinds and all the other  
5 alleged encounters, came from Kendra?

6 A. Yes.

7 Q. It didn't come from her mother?

8 A. I'm sorry?

9 Q. The information didn't come from her mother?

10 A. No.

11 Q. Or Ms. Winters, who just testified?

12 A. No.

13 Q. So that everything that he said tracked what she said?

14 A. Yes.

15 MS. SISON: Thank you.

16 No more questions, Your Honor.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. THORNELOE:

19 Q. Agent Newton, when you interviewed Mr. Darcy, did you ask  
20 him questions because -- did he -- when he told you about  
21 these things, did he tell them to you because you had prodded  
22 him with particular questions, or was he responding to you  
23 freely from his own memory?

24 A. I don't understand the question.

25 Q. What I'm asking is, did you ask open-ended type questions



1 that allowed him to explain what happened on his own?

2 A. Oh, yes.

3 Q. All right. And by the end of the interview, could you  
4 just describe how his mood might have gone up or down and  
5 changed throughout the interview?

6 A. At the beginning of the interview, he was friendly, kind  
7 of, you know, what do you -- you know, "hey, what am I here  
8 for?" type of curiosity.

9 At a certain point we began talking about Kendra. We  
10 specifically talked about the trip to Carowinds. I asked him  
11 did he sleep in the same room as Kendra. He said yes. I  
12 asked him did they have sex that night. He said yes. His  
13 shoulders slumped, he kind of went down, he talked a little  
14 more quietly, and he specifically said that it's the first  
15 time he had told anyone.

16 And we talked a little bit about the confrontation later  
17 on with his -- with Kendra's mother, and he said, "I never  
18 told her that I specif" -- you know, "I never told her. I  
19 specifically did not answer her questions."

20 Q. Did you pick up on a sense of relief in his mood at all?

21 A. Yeah. It was kind of a, you know, cathartic moment, I  
22 guess. It was like he let out a breath of air and his  
23 shoulders kind of slumped, and he talked a little more quietly  
24 after that.

25 MR. THORNELOE: Okay. No further questions.

1           **MS. SISON:** No questions, Your Honor.

2           **THE COURT:** All right. That will complete your  
3 testimony, and you may be excused, Agent Newton.

4           **MS. FORD:** Your Honor, that will be all the  
5 witnesses for the government. If we could just have a moment  
6 to confer to make sure we actually did introduce all the  
7 evidence we intended to?

8           **THE COURT:** All right.

9           **MS. FORD:** Thank you.

10           (Pause.)

11           **MS. FORD:** Your Honor, the government rests.

12           **THE COURT:** All right. Will there be evidence for  
13 the defendant?

14           **MS. SISON:** Your Honor, we have no evidence to  
15 present, so we would rest.

16           **THE COURT:** All right. Members of the jury, I will  
17 now take up what will become the Court's instructions to you  
18 as to the controlling law in this case, take those  
19 instructions up with the parties, the government and the  
20 defense counsel and go over those, and that will take some  
21 time.

22           So rather than asking you to stay further this  
23 afternoon, I'm going to meet with the attorneys and go over  
24 those proposed instructions with them, and that will mean that  
25 closing arguments should be ready by 9:30 tomorrow morning.

1 So at this time I'm going to excuse you, to return tomorrow  
2 morning at 9:30.

3 So with the thanks the Court, you may go, to return  
4 at 9:30 tomorrow morning.

5 And I will see the attorneys in chambers at this  
6 time to go over the proposed instructions.

7 You are excused. Others remain seated. The jury is  
8 excused until tomorrow morning.

9 **(The jury left the courtroom.)**

10 **MS. SISON:** Your Honor?

11 **THE COURT:** Yes.

12 **MS. SISON:** I did go over Mr. Darcy's right to take  
13 the stand, and I just wanted to put it on the record. If the  
14 Court would question him and inform him of his right and  
15 inquire of him if that's his choice to do so.

16 I just want to make sure that he understands that's  
17 his sole decision and it's not counsel making that decision  
18 for him.

19 **THE COURT:** All right. Mr. Darcy, you have the  
20 right to take the witness stand if you choose to do so. You  
21 are not required to do so, and if you do not do so, the Court  
22 has already told the jury and will tell them that they are not  
23 to consider the fact that you do not take the stand in any way  
24 against you, but you have the absolute right personally to  
25 make that choice.

1           So at this time I'm asking you: Do you wish to take  
2 the stand in your own behalf?

3           **THE DEFENDANT:** No, Your Honor.

4           **THE COURT:** Do you understand that you have the  
5 right to make that decision and that you have the right to  
6 choose to take the stand if you wish to do so?

7           Do you understand that right?

8           **THE DEFENDANT:** Yes, Your Honor.

9           **MS. SISON:** Finally, Your Honor, just to protect the  
10 record, we are making our Rule 29 motion at the end of our  
11 case, and I would ask this Court to consider a judgment for  
12 Mr. Darcy.

13           What you've heard in the trial is one person's word  
14 against his. There is no other indication that any sexual  
15 acts did take place across a state line, and I believe the  
16 government has not prevailed in its burden to prove that there  
17 was any intent on Mr. Darcy's part to have sex with the  
18 alleged victim in this case in South Carolina.

19           **THE COURT:** All right. Your Rule 29 motion, then,  
20 will be denied, and we will continue with the trial tomorrow  
21 morning if there are no further motions.

22           **MS. SISON:** Yes, Your Honor. Thank you.

23           **THE COURT:** All right.

24           **MS. FORD:** Your Honor, may I ask a question since  
25 I'm unfamiliar with Your Honor's way of doing things?

1 Will you provide us with a copy of the proposed jury  
2 instructions when we come in tomorrow morning.

3 **THE COURT:** No, I'm going to provide you with a copy  
4 in the next few minutes and go over them with you.

5 **MS. FORD:** Thank you, Your Honor.

6 **THE COURT:** All right. Is the jury out of the  
7 building?

8 **MR. MARSHAL:** They are.

9 **THE COURT:** All right. Take a recess until tomorrow  
10 morning at 9:30.

11 **MARSHAL:** Please rise. Court now stands in recess  
12 until 9:30 tomorrow morning.

13 **THE COURT:** Let me see the attorneys in chambers.

14 (Charge conference held in chambers off the  
15 record.)

16 (End of proceedings.)

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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF NORTH CAROLINA  
6 CERTIFICATE OF REPORTER  
7

8 I certify that the foregoing transcript is a true  
9 and correct transcript from the record of proceedings in the  
10 above-entitled matter.

11 Dated this 1st day of August, 2009.  
12

13 S/ Karen H. Miller

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Karen H. Miller, RMR-CRR  
15 Official Court Reporter  
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